156-

156-527

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 180.

B. H. EVERS, WILLIAM MARSHALL, AND GEORGE F. PHILLIPS, APPELLANTS,

vs.

THOMAS WATSON AND THE DELTA AND PINE LAND COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

FILED MAY 21, 1891.

(14,657.)

(14,657.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 180.

B. H. EVERS, WILLIAM MARSHALL, AND GEORGE F. PHILLIPS, APPELLANTS,

vs.

THOMAS WATSON AND THE DELTA AND PINE LAND COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Subpœna to Thomas Watson *et al.*	7	4
Subpœna to the Delta and Pine Land Co.	8	5
Marshal's return	9	5
Appearance of defendants	10	6
Order granting time to plead	10	6
Motion for rule to compel complainants to file letter, &c	10	7
Order on complainants to file letter, &c.	11	7
Petition of Augustus Hawks	11	7
Amended bill	16	10
Demurrer to bills	23	14

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 21, 1894.

	Original.	Print.
Affidavit of Wm. Watson	25	15
Stipulation as to demurrer	25	16
Order dismissing petition of Hawks	26	16
Final decree	27	17
Order allowing appeal	27	17
Order refusing leave to file amended bill	28	18
Appeal bond	28	18
Clerk's certificate	30	19
Bill of costs	31	19
Opinion	32	19
Clerk's certificate	41	24

1 In the Circuit Court of the United States for the Western Division of the Northern Judicial District of Mississippi.

Proceedings had in the circuit court of the United States for the western division of the northern judicial district of Mississippi, held for its June term, A. D. 1890, at the United States court-room, in Oxford, Mississippi, on the first Monday of June, A. D. 1890, and days subsequent thereto, in the following cause on the equity side of the docket of said court, to wit:

B. H. EVERS *et al.*, Complainants,
vs.
THOMAS WATSON *et al.*, Defendants.

Be it remembered that on the 2nd day of May, A. D. 1890, said cause was commenced by the filing of the original bill of complainants, which is in the words and figures following, to wit:

2 In the Circuit Court of the United States for the Northern District of Mississippi.

To the Honorable R. A. Hill, judge of said court:

1. Your orators, B. H. Evers and Wm. Marshall, subjects of Great Britain and residents of London, England, bring this their bill in equity against "The Delta & Pine Land Company," incorporated by the State of Mississippi, and Thomas Watson, a citizen of the State of Illinois and resident in the city of Chicago, in said State.

2. And your orators now state and show to your honor as follows: That in the year 1881 your orators and Thomas Watson, M. S. Baldwin, Geo. F. Phillips were associated together in the purchase of a large quantity of land in the State of Mississippi, lying in that portion of the State known as the Delta, amounting to five or six hundred thousand acres, and other lands in the southern portion of said State known as "pine lands," amounting to about one hundred and fifty thousand acres.

In the year 1885, certain differences having arisen between the parties as to their respective interests in said lands, the respondent Thomas Watson filed a bill in the chancery court of Le Flore county against B. H. Evers, Wm. Marshall, Geo. F. Phillips, M. S. Baldwin, and N. T. Burroughs, *et al.*, which said suit was removed to this honorable court; wherein a decree was rendered on the 3rd day of October, 1885, in favor of said Watson for the sum of about $145,000.00. Complainants by this reference ask leave to refer to said bill and decree and other papers in said cause as often as may be necessary in the trial of this cause.

3. By the terms of said decree the said sum of $— decreed to be due said Watson was charged as a lien upon said lands, and in the event of the failure of defendants to pay said sum in six
3 months, then the lands were to be sold by James M. McKee, special commissioner, for the satisfaction of said decree, and

the land was accordingly sold, and most of the delta land and all the pine lands were bought at said sale by Watson. Said sale occurred on the — day of ——, 1886, and was afterwards reported to and confirmed by the court. Said decree was a consent decree agreed to in a spirit of compromise and accompanied with and based upon certain agreements to be hereinafter explained.

4. Your orators are advised, believe, and charge the law to be that this honorable court was wholly without the jurisdiction to entertain the said bill or to render the said final decree therein, for this, to wit, the complainant therein, Thomas Watson, as shown in his said bill, was a citizen of the United States, resident in the city of Chicago, in the State of Illinois, and Matthew S. Baldwin, one of the defendants and a material defendant in said cause, was likewise a citizen of the United States, resident in said city of Chicago, in the State of Illinois. Complainants are advised, believe, and charge the law to be that this court was wholly without jurisdiction to entertain a litigation to settle a controversy or dispute between citizens of the same State.

5. Complainants further charge that at and before said sale by said McKee, commissioner, &c., the said Thomas Watson and his agents and representatives combined, conspired, and colluded fraudulently with N. T. Burroughs and others to prevent them from being present at said sale and to deter them from bidding for the lands at said sale, and as a direct result of said fraudulent collusion
Watson was enabled to buy and did buy all of said lands
4 (except 162,000, which it was agreed that Burroughs and his
friends should buy at their own figures) at a mere trifle per acre; but for the fraudulent collusion of Watson and his representatives, thereby preventing any and all competition of bidders, the delta lands, for which there was a demand at that time, would have sold for vastly more than enough to pay off and satisfy said decree and would have left at least the pine lands to these complainants and the other defendants in said suit after fully paying their debt. Instead of this they succeeded, by collusion and fraud, in securing all of said lands and still hold a large balance against the defendants in said suit as due by said decree, more, in fact, than Watson originally advanced in the purchase of said lands. Complainants were not aware of and had no knowledge of this great fraud practiced upon them on the part of Watson and others until recently, and long after said sale had been ratified and confirmed, and they embrace this their first opportunity to expose the same and to bring it before this court and to ask a restitution of their rights and an equitable redress for this great fraud practiced upon them.

6. As stated above, said decree was a compromise decree, accompanied with and based on certain agreements, which complainants ask leave hereafter to file, if they are not on file, with the papers in the original cause. One of the stipulations was that the defendants in that suit were to have six months in which to pay and satisfy said decree, and when they acquiesced in and consented to said decree it was their intention and expectation (and was so un-

derstood by all the parties) to organize a land company in the city of London and to sell the lands referred to in the decree to the same for enough money to pay off said indebtedness and the balance in stock and debentures within the six months allowed to 5 them in said decree. To accomplish this and in carrying out the original agreement and understanding of all parties at the time the decree was consented to a company was organized at great cost and expense to this complainant and the other defendants in said suit and satisfactory sale of lands was arranged to be made to said company and would have been perfected and Watson's debt paid and all the conditions of said decree complied with but for the interference of said Thomas Watson, his agents and representatives, who, by circulating reports in London respecting the titles to the lands, &c., prevented said company from being floated and defeated the efforts of the defendants in said suit in raising the money to comply with their agreement and to pay off and satisfy said judgment or decree. Complainant asks leave hereafter to file a copy of a letter written by one —— Campbell, the attorney of Watson, from Chicago to Walter Webb, of London, who was the solicitor *od* the company then being organized in that city. This and other conduct of said Watson and his representatives prevented said company from being floated. Afterwards and long before the fraud above charged in regard to the State was discovered or suspected by or known to complainant, with a view and under an agreement to float or organize another company to dispose of said lands and with the understanding that complainant was to receive a certain share of the stock of said company, complainant and others of the defendants in said suit executed certain quitclaim deeds to said lands to facilitate the organization of said company, which were to be used for that purpose only, but the organization of said company was never perfected, no stock thereof was ever issued, and no other sum was ever paid for said deeds and they were and are wholly and entirely without any consideration whatever in law and, complainant is advised, are void.

7. Complainant is informed and states and charges on information 6 which he believes to be true that Watson and those persons associated with him have sold a large quantity of said land at a good price, and that, in addition thereto, they have sold a great deal of timber off of the lands remaining in their possession and thereby have realized from said sales largely more than enough to pay the sum due on said decree and interest thereon and taxes, &c.

8. The premises considered, complainant prays the court to set aside the decree rendered in the case of Thomas Watson *vs.* B. H. Evers *et al.* the 3rd day of October, 1885, or, if mistaken as to the jurisdiction of the court, then that the sale by J. M. McKee, commissioner, be set aside as to all the lands still in the possession of defendants; that said Watson and codefendants be required to render an account under oath of all lands and timber sold by them, to whom sold, the sum received and the date the same was received, and amount of taxes paid out by him since the said sale; that if

said sum or sums so received, after paying the taxes, be credited on said decree, and in the event said account should show that he has been overpaid, then for a decree in favor of complainant and the other parties for the overplus, and that the land now in possession of defendants be decreed to be the property of complainant and the other parties as their interests may appear; that summons issue to the "Delta and Pine Land Company," whose chief office is in Jackson, Mississippi, and that publication be made to Thomas Watson, whose residence is Chicago, Illinois, that they be required to appear and answer this bill at the next term of this court, or, if mistaken in the relief prayed for, then for such other and further and general relief as in equity and good conscience & the nature of the case they be entitled to; &, as in duty bound, they will ever pray, &c.

J. L. McCASKILL,
Solicitor for Compl'ts.

7 Filed and process issued May 2d, 1890.

G. R. HILL, *Clerk.*

United States Circuit Court, Northern District of Mississippi, Western Division.

Byron H. Evers *et al.*
vs.
Thomas Watson *et al.*

Subpœna in Chancery to June Term, 1890.

J. L. McCaskill, sol.

The President of the United States of America to Thomas Watson, a citizen of the State of Illinois, resident in the city of Chicago (and the "Delta Pine Land Company," incorporated under the laws of the State of Mississippi, having its place of business in Jackson, Mississippi), Greeting:

For certain causes offered before us in our circuit court for the western division of the northern district of Mississippi, sitting in chancery, we command you that, laying all other matters aside and notwithstanding any excuse, you personally appear on the first Monday of June, 188–, at our circuit court in and for said district and division, sitting in equity, to be held at the town of Oxford, to answer to a bill of complaint exhibited against you by Byron H. Evers and Wm. Marshall, subjects of Great Britain and residents of London, England, complainants in our said court, and further do and receive what our said court shall consider in this behalf; herein fail not, as you will answer to the contrary at your peril.

[SEAL.] Witness the Hon. Robert A. Hill, judge of the district court of the United States for the northern district of Mississippi, at Oxford, the first Monday of December, A. D. 1889, and 114 year of the Independence of the United States.

8

Issued the 2nd day of May, 1890.

G. R. HILL, *Clerk.*

Memorandum.

The defendants are required to enter their appearance in the above cause in the clerk's office of this court on or before the first Monday of June, 1890, or the bill will be taken *pro confesso* against them.

G. R. HILL, *Clerk.*

United States Circuit Court, Northern District of Mississippi, Western Division.

Byron H. Evers *et al.*
vs. } Subpœna in Chancery.
Thomas Watson *et al.*

The President of the United States of America to the "Delta and Pine Land Company," incorporated by the State of Mississippi, having its place of business in Jackson, Mississippi, Greeting:

For certain causes offered before us in our circuit court for the western division of the northern district of Mississippi, sitting in chancery, we command you that, laying all other matters aside and notwithstanding any excuse, you personally appear on the first Monday of June, 1890, at our circuit court in and for said district and division, sitting in equity, to be held at the town of Oxford, to answer to a bill of complaint exhibited against you by Byron H. Evers and William Marshall, subjects of Great Britain and residents of London, England, complainants in our said court, and further do and receive what our said court shall consider in this behalf.

9 Herein fail not, as you will answer to the contrary at your peril.

Witness the Hon. Robert A. Hill, judge of the district court of the United States for the northern district of Mississippi, [SEAL.] at Oxford, the first Monday of Dec., A. D. 1889, and 114 year of the Independence of the United States.

Issued the 2nd day of May, 1890.

G. R. HILL, *Clerk.*

Memorandum.

The defendants are required to enter their appearance in the above cause in the clerk's office of this court on or before [SEAL.] first Monday of June, 1890, or the bill will be taken *pro confesso* against them.

G. R. HILL, *Clerk.*

To the marshal of the southern district of Mississippi to execute and return.

Marshal's Return.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

A. G. Moore is hereby specially deputised to execute and return this process according to law.

S. S. MATTHEWS,
U. S. Marshal.

Executed personally on Wm. Watson, sec'ty of the Delta & Pine Land Co., by handing him a true copy of this writ this May 14th, 1890, at Jackson, Miss.

S. S. MATTHEWS, *U. S. M.*,
By A. G. MOORE, *Sp'l Dep'ty.*

Returned and filed June 6th, 1890.

G. R. HILL, *Clerk.*

B. H. EVERS *et al.*
vs.
THOMAS WATSON *et al.*
Appearance of Def't.

District Court United States, Northern District Mississippi.

10 B. H. EVERS & *al.*
vs.
THOMAS WATSON & *al.*
No. 363.

The Delta & Pine Land Company and Thomas Watson, defendants to the bill filed herein by the complainants on May 2, 1890, come and enter their appearance as defendants in this cause.

FRANK JOHNSTON & JAMES R. YERGER,
Sol's of Defendants.

Filed Jun- 2, 1890.

G. R. HILL, *Clerk.*

Order Allowing 30 Days to Plead.

B. H. EVERS
vs.
THOMAS WATSON *et al.*

The defendants having duly entered their appearance herein it is now ordered by the court that said defendants are allowed thirty days from the date of this order within which to plead, answer, or demur to complainants' bill.

Ordered and decreed Jun- 2nd, 1890.

R. A. HILL, *Judge.*

Filed Jun- 2nd, 1890.

G. R. HILL, *Clerk.*

Motion for Rule, &c.

District Court United States, Northern District, Mississippi.

B. H. Evers & *al.*
vs.
Thomas Watson & *al.*
No. 363.

The defendants in this case move the court for a rule compelling the complainant's to file the letter of Campbell referred to in their bill & also of all the written documents set out in the same or proper copies of the same.

FRANK JOHNSTON & JAS. R. YERGER,
Sol's of Defendants.

11 Motion for rule, &c., filed June 2d, 1890.

G. R. HILL, *Clerk.*

Order to File Exhibits and Allowing Time to Answer, &c.

B. H. Evers & *al.*
vs.
Thomas Watson & *al.*
No. 363.

The motion of defendants to compel complainant- to file the letter of Thomas Campbell and other exhibits made a part of this bill (or copies of the same) before making answer to the same is hereby allowed, and said complainant- *is* hereby required to file the same and to notify defendant- or *his* solicitors of record of that fact.

It is further ordered that sixty days' time is allowed to said defendants to plead, answer, or demur to said bill after filing of said exhibits. This done July 4th, 1890.

R. A. HILL, *Judge.*

Filed July 4th, 1890.

G. R. HILL, *Clerk.*

Petition of Augustus Hawks, of Oxford, England.

United States of America, Northern District of Miss., at Oxford. In Equity.

Byron H. Evers *et al.*
v.
The Delta Pine Land Co.

To the Honorable R. A. Hill, judge of said court:

Your petitioner, Augustus Hawks, of Oxford, England, and subject of Great Britain, respect*ive*ly represents to your honor as follows: That on the — day of May, 1890, Byron H. Evers and Wm. Marshall exhibited their bill in this honorable court against the Delta Pine Land Co. of Jackson, Miss., duly in- 12 corporated by the laws of Mississippi, for the recovery of a large quantity of lands lying in that portion of the State known as the Mississippi Yazoo delta and for the purpose of setting aside the title of said defendant to said lands and of setting aside and vacating a certain quitclaim deed and conveyance, executed by the complainants to said defendant, described in the bill.

Your petitioner now states to this honorable court that on the 13th day of Jan., 1888, one Matthew D. Watson executed a certain promissory note for the sum of $14,520, payable one year after date to the order of himself, with interest at the rate of ten per cent. per annum, and endorsed said note in blank without recourse.

And upon the same day the Delta & Pine Land Company, for the purpose of securing payment of said note, executed and delivered a deed of mortgage conveying to Henry W. Wholsely, trustee, a tract of land in the Yazoo delta containing 10,003 acres, situated in the county of Sun Flower, described as follows, of the following sections: Numbers 7, 8, 9, 10, 11, 12, 13, in township 24, range 3 west, and the following sections, numbers 1, 2, 3, 10, 11, 12, 31, in T. 24, R. 4 W.; also the west half sec. 30, T. 24, R. 4 W.; also the west half of sec. 7, N.W. quarter of section 8, S. half of sec. 17 in T. 18, R. 5 W.

The stipulations of said mortgage are that, in the event that said note was not paid at maturity, *that* the trustee might enter, take possession of said lands, and file a bill for the foreclosure of said mortgage, and at the sale of the lands and out of the proceeds to pay the cost and expenses of the proceedings and next the principal and interest due on said note, and the surplus, if any, to be paid over to the grantor.

There is also an express stipulation in the mortgage that the Delta and Pine Land Co. was not to be under any personal obligation or liability for the payment of the debt beyond the security conveyed.

13 This deed of mortgage was duly executed by said company through the president and secretary and sealed with the corporate seal of the company; was sealed, acknowledged, and filed for record, according to the Mississippi law of Feb. 13, 1888, in the chancery clerk's office of Sun Flower county and duly recorded on the books of said county.

A copy of this mortgage will be filed with this petition as Exhibit A and will be filed on the hearing of this petition, same directed by the court.

Your petitioner for a valuable consideration became the owner and holder of said mortgage note and debt. Afterwards, to wit, on the 27th day of January, 1888, the said Delta Pine Land Co. of Jackson, Miss., executed to your petitioner another conveyance by way of mortgage on the same lands above described for the purpose of securing to your petitioner the sum of 3,150 pounds sterling six months from Jan. 17, 1888, with interest thereon at the rate of ten per cent. from that date.

There was a further express provision in this mortgage that the grantor was not to be under any personal liability or obligation for

this money. This mortgage was duly executed by said company through its president and secretary and under its corporate seal, and was duly acknowledged on the 9th of Feb., 1888, and was filed for record on the 13th of Feb., 1888, in the chancery clerk's office of Sun Flower county and was recorded in the deed books of said county. In said mortgage your petitioner was by a clerical mistake named as Wm. Hawks, of Hertford, Eng., when he should have been styled by his true name of Augustus Hawks, of Hertford, Eng., and your petitioner now avers the fact to be that it was a real purpose and intention of all the parties of the said mortgage that it
14 should have been made to him by his proper name of Augustus Hawks, but your petitioner is advised and submits to this honorable court that a clerical misprision or error of this character cannot in a court of equity affect in any manner the rights of your orator. These mortgages have never been marked as satisfied on the records of said county, nor have they been directly or expressly released in any manner. They were taken in absolute and perfect good faith and for a valuable consideration, as stated, at the dates already named and without any notice, direct or indirect, that the complainants in this cause had any equities or claims, legal or equitable, to any of these lands of the Delta Pine Land Co. or to these lands in particular. On the contrary, your orator believes, from the fact of the purchase by Thomas Watson at the sale made under the decree of this honorable court in the case of Thomas Watson against Evers and others and by a deed from Thos. Watson to the Delta Pine Land Co., based, as your orator believes and states, upon a valuable consideration, and also by a quitclaim deed which Evers, Philips, Marshall, and Baldwin afterwards executed and delivered to the Delta Pine Land Co., that the Delta Pine Land Co. had acquired a good and proper, legal and equitable title and ownership to all these lands purchased by said Thomas Watson at said sale, including this particular land; and your petitioner states further that in taking said mortgages your petitioner relied upon all the conveyances made as aforesaid to the Delta Pine Land Co. and especially upon conveyances, releases, and quitclaims made by Evers, Marshall, and Baldwin, dated Nov. 13th, 1886.

Your petitioner now submits to this honorable court that upon these facts the complainants are estopped and precluded from revoking and recalling their said conveyances to the Delta
15 Pine Land Co. in any respect so as to affect the rights of this petitioner. Said complainants have not made your petitioner a party defendant to their suit, nor have they mentioned him in connection with this controversy, nor have they alluded to his title or claim to this particular land, nor have they by land numbers specifically described this land in their bill, but they have filed a bill against said Delta Pine Land Co. and for these lands generally, describing them as all the lands purchased by said Thos. Watson at the sale under the decree in the Evers and Watson case, and thus in general terms have embraced your petitioner's lands.

The effect of such a bill and allegation of this character is necessarily to cloud the title of your petitioner and to affect injuriously his rights so far as this sale to these lands are concerned.

Your petitioner states also in this connection that, having ownership of this mortgage as aforesaid and believing and trusting in all good faith to the fact that these complainants had conveyed and released by their own deed to the Delta and Pine Land Co. all of these lands, and that there was not or could not be any further controversy between said parties in respect to the ownership of these lands; on the 2d day of Sep., 1889, received from the Delta Pine Land Co. a release and quitclaim deed from said company to said lands, duly executed and acknowledged by said company and filed for record in Sun Flower county on May 6, 1890, before this suit of Evers and others became *a lis pendens*, as your petitioner is advised and so states the fact to be. A copy of this quitclaim deed will be filed with this petition as Exhibit C.

The premises considered, your petitioner prays that in the event that said bill of the complainants is maintained in this court or in
the event that the complainants will not voluntarily dis-
16 claim all claim and pretensions to your petitioner's land
already described, then that your petitioner be made a party defendant to this case, and be allowed to plead, answer, and demur to said bill, and that said bill be dismissed as to your petitioner, but that your petitioner's rights be fully protected in this case by a direction of this court sustaining the lien and equities of said mortgages and the title acquired under the release of the Delta Pine Land Co., as the equities of the case may indicate and require. But if mistaken in this, it being now to the attention of this honorable court that your petitioner has a title and claim to this land, that this court will determine and adjudge that it has no jurisdiction in this case in respect to this particular tract of land, and will make an order to that effect; and if mistaken in this, then for such other relief as in equity and good conscience your petitioner is entitled to.

Respectfully submitted.

FRANK JOHNSTON,
Solicitor for Compl't.

Filed July 19th, 1890.

G. R. HILL, *Clerk.*

Amended Bill.

In the District Court of the United States for the Northern District of Mississippi.

To the Honorable R. A. Hill, judge of said court:

1. Your orators, Byron H. Evers, William Marshall, and George Frederick Philips, citizens and subjects of Great Britain and resident in the city of London, England, bring this their amended bill in
equity against "The Delta and Pine Land Company," incor-
17 porated by the State of Mississippi, and Thomas Watson, a
citizen of the State of Illinois and resident of the city of Chicago, in said State.

2. Your orators now state and show to your honor as follows: That in the year 1881 or 1882 your orators and said Thomas Watson and M. S. Baldwin, of the State of Illinois, then and now resident in the city of Chicago, were associated together in the purchase of a large quantity of land in the State of Mississippi, lying in that portion of said State, known as the Delta, amounting to about five or six hundred thousand acres, and other lands in the southern portion of said State known as "pine lands," amounting to about 150,000 acres. Certain differences having arisen between the parties as to their respective interests in said lands, the respondent Thomas Watson filed a bill in the chancery court of Le Flore county against B. H. Evers, Wm. Marshall, George F. Philips, M. S. Baldwin, *et al.*, which suit was removed to this honorable court, wherein a decree was rendered on the 3rd day of October, 1885, in favor of said Watson for the sum of about $145,000.00. Complainants by this reference ask leave to refer to said bill and decree and all the other papers on file in said cause as often as may be necessary in the trial of this cause.

3. By the terms of said decree the said sum of $—, decreed to be due said Watson, was charged as a lien upon said lands, and in the event of the failure of defendants in that suit to pay said sum in six months from said date, then the lands were to be sold by James M. McKee, special commissioner, for the satisfaction of said decree, and the land was accordingly sold, and most of the delta land and all of the pine lands were bought at said sale by said Thomas
18 Watson; said sale occurred on the — day of ——, 1886, and was afterwards reported to and confirmed by the court; said decree was a consent decree, agreed to in a spirit of compromise, and accompanied with and based upon certain agreements to be hereinafter explained.

4. Your orators are advised, believe, and charge the law to be that this honorable court was wholly without the jurisdiction to entertain the said bill or to render the said final decree therein. Thomas Watson, as shown in his said bill, was a citizen of the United States, resident in the city of Chicago, in the State of Illinois, and a citizen of said State, and Matthew S. Baldwin, one of the defendants and a material defendant in said case, was likewise a citizen of the United States and of the State of Illinois, resident of said city of Chicago. Complainants are advised, believe, and charge the law to be that this court was wholly without jurisdiction to entertain a litigation to settle a controversy or dispute between citizens of the same State.

5. Complainants further charge that at and before said sale by said McKee, commissioner, &c., the said Thomas Watson and his agents and representatives combined, conspired, and colluded fraudulently with Nelson T. Borroughs and others to prevent them from being present at said sale and to deter them from bidding for the lands at said sale, and, as a direct *indirect* result of said fraudulent collusion, said Watson was enabled to buy and did buy all of said lands at a mere trifle per acre, except about 162,000 acres, which it was fraudulently agreed that said Borroughs and his

friends should buy at their own figures. But for this fraudulent
collusion of Watson and his representatives, thereby prevent-
19 ing any and all competition of bidders, the delta lands,
for which there was a demand at that time, would have sold for vastly more than enough to pay off and satisfy said decree, and would have left at least the pine lands to these complainants and the other defendants in said suit after fully paying their debt. Instead of this they succeeded by collusion and fraud in securing all of said lands, and still hold and claim a large balance against the defendants in said suit as due by said decree; more, in fact, than Watson originally advanced in the purchase of said land. Complainants were not aware of and had no knowledge of this great fraud practiced upon them on the part of Watson and others until recently and long after said sale had been ratified and confirmed, and they embrace this the first opportunity to expose the same and to bring it before the court and ask a restitution of their rights and an equitable redress for this great fraud practiced upon them.

6. As stated above, said decree was a compromise decree, accompanied with and based on certain agreements which complainants ask leave hereafter to file if they are not on file with the papers in the original cause. One of the stipulations was that defendants in that suit were to have six months in which to pay and satisfy said decree, and when they acquiesced in and consented to said decree it was their intention and expectation, and it was so understood by all the parties, to organize a land company in the city of London and to sell the lands referred to in the said decree to the same for enough money to pay off said indebtedness, and the balance in stock and debentures and working capital within the six months allowed to them in the decree. To accomplish this, and in carrying out the original agreement and understanding of all parties at the time the
decree was consented to, a company was organized at great
20 cost and expense to the complainants and a satisfactory sale
of said lands was arranged to be made to said company and would have been perfected and Watson's debt paid and all the conditions of the said decree complied with but for the interference of said Thomas Watson or his agents and representatives, who, by circulating false reports in London effecting the title to the lands, &c., prevented said company from being floated, and defeated the efforts of the defendants in said suit in raising the money to comply with their agreement and to pay off and satisfy said judgment or decree. Afterwards, M. D. Watson, son of said Thomas Watson and representing his father and the Delta & Pine Land Company, visited the city of London, and, recognizing the fact that compl'ts still had or ought to have some interest in said lands, agreed to organize & float another English company, agreeing that they were to receive certain shares of stock in said company, which agreements compl'ts ask leave to file as a part hereof. The said complainants being at this time totally ignorant of the great fraud that had been practiced & perpetrated upon them at the time of said sale by said McKee, and relying upon the statement of said Matthew D. Watson, who was at that time in London and who was acting on behalf of and under

authority from the Delta and Pine Land Company, who was also acting for his father, the defendant Thomas Watson, from whom he held a power of attorney, came to complainants & asked them to execute quitclaim deeds to their interests in said lands, stating at the same time that he wanted them in trust solely for the purpose of facilitating the negotiations for the sale of the said lands to said English company, and agreeing and promising that said deeds when executed would by him be deposited with Walter Webb & Co., of 23 Queen Victoria street, London, the solicitors for said English company, and compl'ts charge that said Matthew D. Watson did
21 promise complainants that if no sale of said lands to the English company resulted that the said deeds should be inoperative and void and should be returned to these complainants. Believing in the honesty and good faith of said Watson, complainants did execute said deeds; but said Watson, instead of depositing said deeds with the solicitors in London of said English company, as he promised to do, did fraudulently and in direct violation of his promises and agreement send the said deeds to Mississippi and did cause them to be registered in the several counties in which the lands concerned are located. This was done without the knowledge or consent of complainants. The organization of said English company was never perfected, but the negotiations for the sale of said lands to said English company have been abandoned. No stock of said company was ever issued. Complainants charge that they have never received any consideration for said deeds or for their interest in the said lands, and that said deeds were obtained from complainants by fraud and by false pretenses and promises made by said Watson, the agent and representative of the defendants, and are wholly and entirely without any consideration whatever in law and, complainants are advised, are void.

7. Complainants are informed and state and charge on information which they believe to be true that said Watson & persons associated with him in the Delta and Pine Land Company have sold a large quantity of said lands at a good price, & that in addition thereto they have sold a great deal of timber off of the lands remaining in their possession, & thereby have realized from said sales largely, more than enough to pay the sum due on said decree and interest thereon and taxes, &c.

22 8. The premises considered, complainants pray the court to set aside the decree rendered in the case of Thomas Watson *vs.* B. H. Evers *et al.* the 3rd day of October, 1885, or, if mistaken as to the jurisdiction of the court, then that the sale by said J. M. McKee, commissioner, be set aside as to all the lands still in the possession of defendants; that said quitclaim deeds be held to be inoperative and void; that the defendants herein be required to render an account, under oath, of lands and timber sold by them, to whom sold, the sum received, & the date the same was received, and the amount of taxes paid out on said lands since said sale; that said sum or sums so received, after paying the taxes, be credited on said decree and, in the event said account should show that Watson has been overpaid, then for a decree in favor of complainants for

the overplus, & that the land now in possession of defendants be decreed to be the property of complainants as their interests may appear; that summons issue to the Delta & Pine Land Company, whose chief office is in Jackson, Mississippi, and that publication be made to Thomas Watson, whose residence is Chicago, Illinois, and that they be required to appear and answer this bill at the next term of this court or, if mistaken in the relief prayed for, then for such other and further and general relief as in equity and good conscience and the nature of the case they may be entitled to; and, as in duty bound, they will ever pray, &c.

J. L. McCASKILL,
Sol. for Compl'ts.

Filed Oct. 25th, 1890.

G. R. HILL, *Clerk.*
D. H. ARCHIBALD, *D. C.*

Demurrer of Defendants.

B. H. Evers *et al.*
vs.
23 The Delta & Pine Land Co. & Thomas Watson.

And now come the defendants, by their solicitors, and, reserving all exceptions to the many errors and inaccuracies in said original and amended bills, do hereby demur to the same, and, for grounds or causes of demurrer, state the following:

1. The court has no jurisdiction of the subject-matter of the cause and the parties defendant.

2. There is no equity in the bill.

3. The bill is multifarious in joining distinct subject-matter and distinct defendants, having no common interest.

4. The bill is too vague and indefinite in its averments and its character. It cannot be determined whether it is an original bill for independent relief, for the rescission of contracts, or a bill of review, or a petition of an ancillary character.

5. As a bill of review to review the former case on the record, it is barred by limitation.

6. As an original bill, it is barred by the long delay and laches of the complainants.

7. There is no case stated against the Delta and Pine Land Company whatever, and nothing in the bill to show any grounds of relief against said company, for, so far as the bill states, said company purchased the lands without notice of any of the averments of the matters in said bill, and said company has no interest whatever in the contrary.

8. The bill is vague and uncertain in respect to the agreement of the parties. No agreements substantially are set out in the bill, nor exhibited with the bill.

24 9. It is not shown by the bill that the court had no jurisdiction in the former suit. It is shown that there was a final decree by consent of all parties to that cause.

10. And the character and nature of that proceeding is not shown with sufficient certainty to enable this court to decide the question of jurisdiction in the former suit.

11. The jurisdiction of the court on the former suit cannot be attacked collaterally by this bill.

12. The consent and agreement of the parties to the former suit executed fully and carried out is one estoppel, and cannot be rescinded and set aside on any jurisdictional question.

13. The deed made by the complainants is a waiver of any irregularities in the decree, proceedings, or sale under the former suit.

14. If the bill contains matters of equity cognizance, and the object is in effect to restore the *status quo*, then Borroughs & Baldwin, as well as all the purchasers at said sale, are necessary parties to this cause.

15. It is not shown by the bill that the complainants did not have full opportunity to investigate and ascertain the facts connected with the sale, nor that they were prevented from making any and all objections at the confirmation of the sale.

16. And for other causes to be stated on the hearing.

Wherefore def'ts pray that the bill be dismissed.

FRANK JOHNSTON AND
JAS. R. YERGER,
Sol'rs for Def't.

I certify that in my judgment this demurrer is well taken.

FRANK JOHNSTON, *Sol'r.*

Dec. 1st, 1890.

25 B. H. WATSON *et al.* *vs.* THE DELTA & PINE LAND COMPANY *et al.* } Demurrer of Defendants.

UNITED STATES OF AMERICA,
Northern Dist. Mississippi, at Oxford. }

Personally appeared before me William Watson, secretary of the Delta & Pine Land Company, who, being by me duly sworn, says on oath that according to the best of his knowledge, information, and belief the charges and averments of fraud in the bill in the case of Evers *et al. vs.* The Delta & Pine Land Company are not true, and he denies the same. Affiant states further that this demurrer is not filed for vacation or delay.

WILLIAM WATSON, *Sec'y.*

Sworn to and subscribed before me this the 3rd day of December, 1890.

G. R. HILL, *Clerk.*

Filed Dec. 2d, 1890.

G. R. HILL, *Clerk.*

B. H. EVERS *et al.*
vs.
THE DELTA & PINE LAND CO. } Agreement of Counsel.

B. H. EVERS *et al.*
vs.
THE DELTA & PINE LAND COMPANY & THOMAS WATSON.

It is hereby agreed that the joint demurrer of The Delta & Pine Land Company and Thomas Watson, defendants to the original and amended bills of complainants, may be taken and considered as if the defendants had each filed separate demurrers containing the grounds set forth in the demurrer filed in the cause. 26

It is further agreed that as to the ground of multifariousness stated in the demurrer it is to be considered and treated as if presented by a special demurrer.

This the 3rd day of December, 1890.

J. L. McCASKILL,
Sol'r for Complainants.
FRANK JOHNSTON AND
JAMES R. YERGER,
Sol'rs for the Defendants.

Filed Dec. 3rd, 1890.

G. R. HILL, *Clerk.*

Petition of A. Hawks Dismissed.

B. H. EVERS *et al.*
vs.
THE DELTA & PINE LAND CO. and THOMAS WATSON.

This cause coming on to be heard on the petition of Augustus Hawks in open court, and all the parties being present by their respective solicitors, and it appearing to the court that the lands claimed by the petitioner, Augustus Hawks, and described in his said petition are not sought to be charged or to be embraced in this cause, and this being assented to by the solicitor of record for the complainants in open court, and it appearing also that no case is stated against the petitioner or his lands purchased from the defendants, it is accordingly ordered and decreed that his petition herein be, and the same is hereby, dismissed.

Ordered, adjudged, and decreed this the 5th day of December, 1890.

R. A. HILL, *Judge.*

Filed & entered Dec. 5th, 1890. M. 1, p. 260.

G. R. HILL, *Clerk.*

27 *Decree Sustaining Demurrer & Dismissing Bill.*

BYRON H. EVERS *et al.*
vs.
THE DELTA & PINE LAND CO. and THOMAS WATSON.

This cause coming on to be heard on the demurrer of the defendants to the original and the amended bills of the complainants, and the same having been argued by counsel for the respective parties and having been fully considered by the court, it is now ordered, adjudged, and decreed by the court that said demurrer be and is sustained, and the said original and amended bills are hereby dismissed at the cost of the complainants, to be taxed, and for which execution may issue.

Ordered, adjudged, and decreed this the 5th day of December, 1890.

R. A. HILL, *Judge.*

Filed and entered, M. 1, p. 260, Dec. 5th, 1890.

G. R. HILL, *Clerk.*

Decree Granting Appeal.

B. H. EVERS *et al.*
vs.
THOMAS WATSON *et al.*

This day came the complainants in open court and in the presence of defendants' solicitors and moved the court for an appeal to the Supreme Court of the United States from the decree rendered in this cause sustaining the demurrer to the bill and amended bill and dismissing the same; which motion is sustained and said appeal is granted by the court upon complainants entering in bond, with one or more approved sureties, to be payable to defendants in the sum of one thousand dollars, conditioned for the payment of the costs incident on said appeal; which bond must 28 be executed and filed within ninety days from this date or said appeal will not be operative.

Said bond, with sureties, to be approved by one of the judges of this court.

Ordered, adjudged, and decreed this Dec. 5th, 1890.

R. A. HILL, *Judge.*

Filed and entered, M. 1, p. 260, Dec. 5th, 1890.

G. A. HILL, *Clerk.*

Leave to File Amended Bill Refused.

B. H. EVERS *et als.*
vs.
THOMAS WATSON *et als.*
} Leave to File Amended Bill Refused.

After decree of the court in the demurrer in the cause and the dismissal of the bill and amended bill, complainants' counsel asked leave of the court to file an amended bill, but did not state any new or different facts which he proposed to embrace in the amended bill, and did not present an amended bill. The court declined to allow the complainants leave to file an amended bill without such bill being presented or a statement of the facts intended to be embraced in it.

R. A. HILL, *Judge.*

Filed & entered, M. 1, p. 361, Dec. 5th, 1890.

G. R. HILL, *Clerk.*

Appeal Bond.

B. H. EVERS *et al.*, Appellants,
vs.
THOMAS WATSON *et al.*, Appellees.
} Appeal Bond.

29 Know all men by these presents that we, B. H. Evers, Wm. Marshall, and Geo. F. Philips, as principals, and J. L. McCaskill, as surety, are held and firmly bound unto Thomas Watson and the Delta and Pine Land Company in the sum of one thousand dollars, to be paid to them, their executors or administrators, jointly and severally; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this t/e 5th day of February, 1891.

Whereas the above-named B. H. Evers and William Marshal- and Geo. F. Philips have prayed an appeal to the Supreme Court of the United States of America to reverse the *bill* rendered in the above-entitled cause against them dismissing their original and amended bill by the circuit court of the United States in and for the northern district of Mississippi, western divi/ion, held at Oxford, in and for said district and division, said decree being against said B. H. Evers & William Marshall and Geo. F. Philips and in favor of said Thomas Watson and the Delta and Pine Land Company and dated the 5th day of December, 1890:

Now, therefore, the condition of this obligation is such that if the above-named B. H. Evers and Wm. Marshall and Geo. F. Philips shall prosecute and appeal to and with effect and shall answer all costs if they fail to make good their appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

B. H. EVERS,
GEO. F. PHILLIPS,
WM. MARSHALL,
By J. L. McCASKILL, *Att'y.*
J. L. McCASKILL.

30 The above bond with surety is approved this Feb. 7th, 1891.

R. A. HILL, *Judge.*

Filed Feb. 7, 1891.

G. R. HILL, *Clerk.*

UNITED STATES OF AMERICA,
Western Division of the Northern District of Mississippi, } *ss:*

I, G. R. Hill, clerk of the circuit court of the United States for said district and division, do hereby certify that the foregoing twenty-nine pages of type-written matter contain a true, correct, and complete transcript and copy of all the pleadings, orders, and decrees and of all the proceedings of every nature had in said court in the above-entitled cause, as fully and completely as the same now appear on file and of record in the clerk's office of said court.

Seal United States Circuit Court, Northern District Miss., Western Division.

In testimony whereof I hereunto set my hand and affixed the seal of said court at my office, in Oxford, in said district and division, on this the 18th day of May, A. D. 1891.

G. R. HILL, *Clerk.*

31 In the Circuit Court of the United States for the Western Division of the Northern Judicial District of Mississippi.

B. H. EVERS *et al.*
vs.
THOMAS WATSON *et al.* } No. 363. Bill of Cost.

To clerk's fees to final decree and appeal	$19 20	
2 " " preparing record for Supreme Court	9 00	
		$28 20
" marshal's cost		3 00
" attorney's tax fee		10 00
Total		$41 20

32 *Opinion.*

(Circuit Court, Western Division, Northern District of Mississippi. November Term, 1890.)

B. H. EVERS *et als.*
v.
THOMAS WATSON *et als.*

J. L. McKaskill for complainants, Johnston & Yerger for defendants.

Filed Dec. 4, 1890.

HILL, *J.:*

The question now for decision arises upon defendants' demurrer to complainants' bill and amended bill, which will be considered as one bill, and which in substance charges that complainants B. H. Evers, William Marshall, and George Frederich Phillips are residents of the city of London, England, and subjects of Queen Victoria, Sovereign of England, &c.

That in the years 1881 & '2 complainants and defendant Thomas Watson, together with one M. S. Baldwin (said Baldwin and Watson were then and since citizens of Chicago, Ill.), were associated together in the purchase of large tracts of land situate in the delta in this State, containing together some five or six hundred thousand acres, with other lands in the southern part of the State, containing together some 15,000 acres, known as pine lands.

That certain differences having arisen between them, defendant
Watson filed his bill of complaint against complainants and
33 said Baldwin in the chancery count of Le Flore county, which
was removed into this court. (By mistake Le Flore instead of De Soto county was stated, and this court for the district court of the United States for this district instead of the circuit court of the United States.)

That a decree was rendered by said court on the 3rd day of October, 1885, in favor of Thomas Watson, for the sum of $145,000.00 and which was charged as a lien on said lands, and that in the event said money was not paid within six months that the lands, or so much as might be necessary, should be sold by Jas. M. McKee as special commissioner and the proceeds applied to the payment of the amount so decreed to be paid to said Watson.

That said lands were sold by said McKee as commissioner on the — day of ——, 1886, and which sale was afterwards confirmed by said court.

That said court was without jurisdiction whatever to maintain said cause and enter said decree for the reason that said Watson and said Baldwin were citizens of the same State, and that all of said proceedings were null and void.

That before said sale by the commissioner said Watson and his agents and representatives combined, conspired, and confederated with one Nelson Burroughs *et als.* to prevent them from being present at said sale and to deter them from bidding for said lands at said sale: that the result of which was that said Watson purchased said lands at a mere trifle (except 162,000), which as a result of said fraudulent combination said Burroughs and his friends purchased at a low rate by means of preventing other bidders from
bidding therefor, and but for which said lands would have
34 sold for much more than enough to pay off and discharge
said decree and left a large balance to complainants and others interested therein, whereas said lands sold for much less than the amount of said decree which said Watson still holds against complainants.

That complainants were not aware of and had no knowledge of said fraudulent combination, &c., until recently and long after said sale had been confirmed, and that this is the first opportunity to apply for a remedy for the wrongs done them; that said decree was a compromise decree, accompanied by and based on certain written agreements, which complainants ask to file, if not on file, in said cause.

That one stipulation in said written agreement was that the defendants in suit were to have six months in which to pay said decree, and that when they acquiesced in said decree it was their intention and expectation and it was understood by all parties to arrange a land company in the city of London and to sell the lands mentioned in said decree for money enough to pay off said indebtedness and the balance in stock and debentures and working capital within the six months allowed to them in said decree.

That to accomplish this end and to carry out the original agreement and understanding at the time the consent decree was made a company was organized at great cost and expense to complainants and a satisfactory sale was arranged to be made to said company and would have been perfected and Watson's debt paid but for the interference of Watson or his agents, who, by circulating certain reports relative to the title to the said lands, prevented said company from being floated and defeated the defendants from raising the money to pay said decree; that afterwards M. D.
35 Watson, son of said Thomas Watson and agent of the Delta
and Pine Land Company, visited London, and, recognizing that complainants still had or ought to have an interest in said lands, agreed to arrange and float another English company, agreeing that they were to receive certain shares of stock in said company, and which they ask leave to file in this cause.

The complainants being at this time totally ignorant of the fraud in the sale by McKee, commissioner, and relying upon the statements of said Matthew D. Watson, then in London, and acting under the authority of said Delta Land Company and also as the agent of his father, Thomas Watson, from whom he held a power of attorney, came to complainants and asked them to sign a quitclaim deed to their interest in the lands so purchased by said Thomas Watson, stating at the time that he wanted them solely for the purpose of facilitating the sale of said lands to said company and agreeing and promising that said deeds when executed would be by him deposited with Walter Webb & Co., of 23 Queen street, London, the solicitors of said English company.

That said M. D. Watson promised complainants that if no sale was made to said English company that the deeds should be inoperative and void and returned to complainants; that, trusting in these promises, complainants did execute the quitclaim deeds, but that said Watson, instead of depositing said deeds as he had promised, fraudulently sent said deed to America and had it registered in the counties in which the lands are situate, which was done without the knowledge or consent of complainants.

That said company was never perfected or said lands sold, and
that complainants have never received any consideration for
36 the execution of said deed; that said Thomas Watson and
those associated with him in the Delta Land Company have sold a large portion of said lands at a good price, and have also sold large quantities of timber from said lands, and have realized

therefrom more than enough to pay the amount due said Thomas Watson.

The prayer of the bill is that if mistaken as to the non-jurisdiction of the court in said cause that the decree for the sale of the land and all the proceedings thereunder be set aside.

That said Thomas Watson and the Delta & Pine Land Company be required to account for all the proceeds of the sales of said lands and timber, and that said quitclaim deeds be declared void and cancelled, and that the same be set aside.

And for such further proceedings as equity and right may require.

The demurrer sets up as grounds therefor a number of causes which need not be specifically stated, as they are embraced in it as a general demurrer, and presents the following questions for decision:

1st. Did the district court exercising circuit court powers as it did at that time have jurisdiction of the matters and the parties to said cause, and to render the decrees made therein?

The reason stated in the bill denying the jurisdiction is that Watson and Baldwin were both citizens of the State of Ill.

The suit was brought in the chancery court of De Soto county, which had complete jurisdiction of both the subject-matter of the suit and of all the parties. Before the cause was removed in the district court all the parties by written agreement arranged the controversy between themselves by placing Evers on one side and all the others on the other side, thus placing Watson and Baldwin's interest together; so that had the bill then been filed
37 in the district court there would have been no question as to
the jurisdiction of the court.

As I understand the law in such case, this is the test on the right of removal. No matter how the parties stand on the record as plaintiff or defendant, a court of equity looks to the interest of the parties in the controversy involved in the suit at the time the removal is made, and if the suit could have been brought in the Federal court at that time the right of removal will be maintained, and, being once in the Federal court, its jurisdiction will be continued until the end of the litigation.

The bill fails to set out the substance of the proceedings *of* in the district court, as required by the rules of the court, and for that reason the demurrer might be sustained, but the bill asks that they be referred to as often as may be required, and for the disposition of this and other questions presented I will consider these proceedings as though they were set out in the bill.

A motion was made by Baldwin to remand the cause to the chancery court, from which it came, which motion was overruled by the court. If this was error the remedy was by appeal to the Supreme Court, and not by the proceedings in this cause.

So that ground of demurrer is not well taken.

The next question is, was the decree establishing Watson's claim for $145,000.00, for money advanced by him in the purchase of the lands, in perfecting the legal title in Evers, and in paying the taxes

thereon and declaring the same a lien thereon for its payment, void-
able or void? If voidable only, the remedy sought by complain-
ants' bill cannot be maintained. The remedy was by appeal,
38 which is now barred. It is admitted in the bill that it was
a compromise decree by consent of all the parties to the suit,
based upon arguments in writing. Indeed, the validity of the de-
cree is not directly attacked, and this question need not be further
considered.

The next question is, was the sale of the lands made by J. M. McKee, commissioner, and confirmed by the court valid, voidable, or void? If only voidable the remedy was by appeal only, which is now barred by limitation.

The all*i*gations in the bill for setting aside the decrees for the sale and the sale of the lands are that by the terms of the agreement *and* stated in the decree complainants were allowed six months in which to pay off and discharge the sum so decreed to be paid to Thomas Watson and thereby discharge the lien.

But by referring to that decree it is found that this extension was granted upon condition that complainants and others associated with them in the agreement *to* pay off and satisfy — three months the taxes due upon said lands, and if not paid within that time the commissioner would proceed to make the sale. The taxes were not paid by complainants or their associates within the time stated and have not since been paid by them. The sale had not been made until after the three months had elapsed, so that this objection to the decree and sale cannot be maintained.

The next ground for setting aside the decree and sale is that when the decree was made it was understood and contemplated that as a means of raising the money to pay off the sum due Watson that a company would be formed in London, England, who would advance the money to pay off the amount due Watson and would issue stock and debentures to complainants in payment for the
lands.

39 That by reports made by Watson and his agents respect-
ing the titles to the land this scheme was defeated and com-
plainants sustained great loss thereby; but the bill does not allege what said reports were, to whom made, or that they were untrue, or any facts from which the court could determine whether such statements tended to constitute fraud on the rights of complainants or not. Besides, if these reports were made before the sale, they should have been presented as grounds for its disaffirmance, and if made after the sale it could not affect Watson's rights under the sale.

The last and only other ground for setting aside the sale is the alleged conspiracy between Watson and others and Burroughs and others. The bill fails to state with any precision the facts constituting the alleged fraud, the names of persons who would have bid for the lands, how much they would have given, or whether they were prepared to pay the purchase-money.

There is no allegation that the complainants did not know of the sale, or that they were not present in person or by agent or attorney, or that they made any effort to ascertain whether there was any fraud or collision between these parties or any others to prevent a fair sale of the lands.

It is true the bill does allege that the facts had just come to their knowledge, and that this is the first opportunity to seek redress.

This is not sufficient. Parties cannot sit still and depend on chance to ascertain whether frauds have been committed upon their rights, and especially, as in this case, when it is alleged that suspicious circumstances attended the sale, which must have been
known to them at the time the sale was made, and to remain
40 silent until years have elapsed and the lands have been pur-
chased by other parties, presumed to be for a valuable consideration, and without notice, so far as the bill alleges, and when it is impossible to place the parties *in statu quo*.

The last question presented is, shall the bill be retained and the quitclaim deeds be declared null and void and set aside?

The complainants knew that the new company had not been formed or the lands sold to it, to facilitate which the quitclaim deeds are alleged to have been executed.

It would have been an easy matter for complainants to have ascertained whether the deeds had been deposited with the attorneys of the contemplated company; and, if not, to have called for their return; and if not returned to have taken immediate steps for their cancellation.

It is too late, after the lapse of time which has intervened, and most if not all the lands have been sold to other parties, who, so far as the bill shows, must be presumed to have purchased for value, without notice of the claim set up by complainants, to now set this deed aside, as they impose no obligations or liability on complainants, and if complainants are not entitled to any interest in the lands, as above held, the setting them aside could work no benefit to complainants, on the one side, or the refusal to do so work any injury to them, on the other.

So that, considering the statements and allegations made in the bill and the proceedings in the district court referred to, I am of opinion that they do not show a case entitling the complainants to the relief for which they pray. The result is that the demurrer must be sustained and the bill and amended bill dismissed, and that the complainants pay the costs of the cause. The rules of law applicable to the questions presented are so familiar to the profession that reference to the authorities is not necessary.

R. A. HILL, *Judge*.

41 UNITED STATES OF AMERICA, }
Northern District of Mississippi. }

I, G. R. Hill, clerk of the circuit — of the United States for the western division of the northern district of Mississippi, do hereby certify that the foregoing nine pages of typewritten matter is a true, complete, and correct copy of the opinion of the court filed in the case of B. H. Evers *et als. vs.* Thomas Watson *et als.* as the same remains on file in my office.

Given under my hand and the seal of said court, at Oxford, the 21st day of May, A. D. 1891.

[Seal United States Circuit Court, Western Division, Northern District Miss.]

G. R. HILL, *Clerk.*

Additional cost bill, $3.00.

42 [Endorsed:] Sup. Court U. S., Oct'r term, 1890. No. 1793. B. H. Evers *et al.*, app'ts, *vs.* Thomas Watson & *al.* Opinion of circuit court.

[Stamped:] Office Supreme Court U. S. Filed May 25, 1891. James H. McKenney, clerk.

Endorsed on cover: Case No. 14,657. N. Mississippi C. C. U. S. No. 180. B. H. Evers, William Marshall, and George F. Phillips, appellants, *vs.* Thomas Watson and The Delta & Pine Land Company. Filed May 21, 1891.

15 6

Office Supreme Court, U. S.
FILED.
JAN 21 1895
JAMES H. McKENNEY,
Clerk

156-527

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 180.

B. H. EVERS, WILLIAM MARSHALL, AND GEORGE F. PHILLIPS, APPELLANTS,

vs.

THOMAS WATSON AND THE DELTA AND PINE LAND COMPANY, APPELLEES.

BRIEF FOR APPELLANTS.

JAMES L. McCASKILL,
Attorney for Appellants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 180.

B. H. EVERS, WILLIAM MARSHALL, AND GEORGE F. PHILLIPS, APPELLANTS,

vs.

THOMAS WATSON AND THE DELTA AND PINE LAND COMPANY, APPELLEES.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

In 1884 and for several years prior thereto B. H. Evers, William Marshall, and George F. Phillips, citizens and subjects of Great Britain, and Thomas Watson and Matthew S. Baldwin, both citizens of Chicago and the State of Illinois, were interested in a large body of land in the State of Mississippi, amounting to about 600,000 acres, the title to which was in said Evers except the interest he had some time before conveyed to Baldwin.

On July 12, 1884, Thomas Watson, claiming that he had advanced or loaned the money to Evers with which to purchase the land, instituted his bill in the chancery court of De Soto county, Mississippi, to establish a trust in the lands against B. H. Evers, George F. Phillips, William Marshall, and M. S. Baldwin. The bill was answered, denying the trust and claiming that Evers had only sold an interest in the land to Watson. Evers filed a bond and petition for removal to the Federal court. No order of removal was made by the State court and Evers did not file the transcript of the record in the Federal court. On January 3, 1885, Thomas Watson filed an amended or ancillary bill in the United States district court for the northern district of Mississippi, praying for the appointment of a receiver, etc., and filed in that court as an exhibit to his bill the record in the chancery court of De Soto county. In both the original and the amended bills of Watson the citizenship of Watson and Baldwin as citizens of the State of Illinois and the alienage of the other defendants was distinctly and carefully stated. In July, 1885, there were two decrees rendered in the cause, the first appointing a receiver to redeem the land from tax sale and the latter was a consent decree, based on a written agreement, **adjusting the rights of all parties,** under which the land was sold by James M. McKee, commissioner, and all the land except about 62,000 acres was bought by Thomas Watson. The bill in this case was filed to set that decree aside, alleging that it was void because the Federal court was wholly without jurisdiction to hear and determine the subject-matter of controversy, and also charging fraud on the part of Watson and the Delta and Pine Land Company, to which the defendants demurred. The court sustained the demurrer and dismissed the bill, and the ruling of the court in sustaining the demurrer and refusing to let the appellant file an amended bill is now assigned for error.

The jurisdiction of the district court, if it had any, which I deny, was conferred by the removal act of 1875. The second section of the act reads thus:

"That any suit of a civil nature at law or in equity now pending or hereafter brought in any State court where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars on arising under the Constitution or laws of the United States or treaties made or which may be made under their authority or in which the United States shall be plaintiff or petitioner or in which there shall be a controversy between citizens of different States or a controversy between citizens of the same State claiming lands under grants of different States or a controversy between citizens of a State and foreign states, citizens or subjects, either party may remove said suit into the circuit court of the United States for the proper district, and when, in any suit mentioned in this section, there shall be a controversy which is wholly between citizens of different States and which can be fully determined as between them, then either one or more of the plaintiffs or defendants actually interested in such controversy may remove said suit into the circuit court of the United States for the proper district."

The bill in this case alleges that the suit was brought in the State court by Thomas Watson, a citizen of Chicago, in the State of Illinois, against M. S. Baldwin, also a citizen of Chicago, in the State of Illinois, and Evers, Phillips, and Marshall, citizens of England and subjects of her majesty the Queen of Great Britain and Ireland; that Baldwin, a citizen of the same State with the plaintiff Watson, was a material defendant in both said State and district courts.

It does not appear in the record before this Court that there was a separable controversy that would entitle either Watson or Baldwin to the removal to the United States court from the State court. To give the United States court jurisdiction the case must have been removable under the statute already quoted. They could not change their relations after the commencement of the suit so as to give the court jurisdiction.

A. & E. Ency. of Law, vol. 12, 305, note 4.
Stone *vs.* South Carolina, 117 U. S. Reports, 430.
Cameron *vs.* Hodges, 127 U. S. R., 322–326.
8 Sup. C't Rep., 1154.

The case could not have been removed by either Evers, Marshall, or Phillips, because the record shows them to be aliens (Gould *vs.* Tucker, A. & E. Ency. of Law, vol. 12, 129, and King *vs.* Cornell, 106 U. S., 398), and the other defendant in the State court, Baldwin, is shown by the record to be a citizen of the same State with the plaintiff Watson, so neither of them could have removed the case under the removal act. (Acts March 3, 1875, p. 470.)

The United States circuit court have not as incident to their constitution as such any common-law jurisdiction; they possess no other jurisdiction than that concurrently conferred by the Constitution and Congress of the United States.

In re Barry, 45 Fed. Rep., 113: To give the circuit court jurisdiction on the account of diversity of citizenship the citizenship must distinctly and explicitly appear of record.

13 Wall., 602.
109 U. S., 278.
11 U. S. Rep., 379.

Jurisdiction of a United States court will not be presumed as in case of a common-law English or State court, but the record must show jurisdiction affirmatively.

Scott *vs.* Sanford, 19 How., 393.
Ex parte Smith, 94 U. S. R., 455.

And it must not be exerted in a case to which it does not extend, even if all the parties desire it.

Dred Scott case, 19 How., 566.
R. R. Co. *vs.* Swan, 11 U. S. R., 379.

Nor can consent of parties give jurisdiction. (R'y Co. *vs.* Ramsey, 22 Wall., 322; A. & E. Ency. of Law, vol. 12, 302.)

The record shows that none of the parties were citizens of the State of Mississippi. The court had no jurisdiction between an alien and a citizen of the United States unless the citizen was a citizen of the State where the suit was brought.

Moseman *vs.* Higginson, 4 Dall., 12.
Abercombrie *vs.* Dupins, 1 Cranch, 343.
Wood *vs.* Wagner, 2 *id.*, 9.
Brown *vs.* Strode, 5 Cranch, 308.

If there are several plaintiffs and defendants, each plaintiff must be capable of suing each defendant.

New Orleans *vs.* Winter, 1 Wheat., 91.
Standbridge *vs.* Centress, 3 Cranch, 267.
Van Antwerp *vs.* Hubbard, 8 Blatchford, 282.
Veither *vs.* Hind, 7 Peters, 261.
Lockhart *vs.* Thorn, 1 Woods, 633.

Baldwin and Watson being citizens of the same State (Illinois), and the other defendants in the court below being aliens, it is evident the suit could never have been brought originally in the Federal court. This is not a bill of review, but counsel in his sixth ground of demurrer says: "As an original bill it is barred by the long delay and laches of the complainants." I have not been able to find any statute of limitations to sustain that ground of the demurrer. It is never too late in the courts of the United States to consider the question of jurisdiction (Saunders *vs.* Leverett, 31 Fed. Rep., 376). In this case the court said: "The circuit court of the United States is limited in its jurisdiction, and when it does not obtain it is an inflexible rule that the judicial power of the United States must not be exerted, even if both parties desire to have it exerted (111 U. S., 379; 1 Wall., 5). A judgment of a court without jurisdiction is a nullity, and when the failure of the jurisdiction is alleged in the courts of the United States it is never too late for the courts to consider the evidence *pendente lite* thereto."

If the district court had no jurisdiction of the case, the judgment or decree rendered therein is void, and no lapse of time could possibly infuse into it any force or vitality. Jurisdiction may be inquired into at any time, directly or collaterally.

A. & E. Ency. of Law, vol. 12, 306–308.

A judgment entered by a court without jurisdiction is void and may be attacked at any time and in any way.

A. & E. Ency. of Law, vol. 12, 311, 312.

In *Ex parte* Anderson Crenshaw, 15 Peters, 119, it is held that the court must have jurisdiction of the person or its judgment will be void. In Elliott *vs.* Pierson, 1 Peters, 340, the court says:

> "When a court has jurisdiction it has a right to decide every question which occurs in the cause, and, whether its decisions be correct or otherwise, its judgments, until reversed, are regarded as binding in every court; but if they act without authority its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought even prior to a reversal in opposition to them. They constitute no jurisdiction, and all persons concerned in executing such judgments or sentences are considered in law as trespassers. This distinction runs through all the cases, and it proves that the jurisdiction of any court exercising authority over a subject may be inquired into in any court when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings."

So it is held in Swift *vs.* Myers, 37 Fed. Rep., 37. In Catlin *vs.* Page, 18 Wall., 350, the jurisdiction of a State court was questioned in an action in the Federal court, sitting in the same State. The publication against the defendant Franklin in the case wherein the judgment was rendered and under which the plaintiff acquired title was made without any application to the court for process as the statute of California required. Subsequently the judgment or decree under which the property was sold was reversed by the

State supreme court on this ground. The plaintiff in ejectment, having purchased before such reversal, insisted that the record showed apparent jurisdiction of the person, and that the decree could not be collaterally attacked unless the record showed that the court did not have jurisdiction.

The circuit court so held, using this language:

> "The record in the consolidated action is here attacked collaterally, and not on appeal or in a direct proceeding of any kind to recover, set aside, or vacate the decree. The rule is different in the two cases. When attacked collaterally it is not enough that the record does not affirmatively show jurisdiction, but, on the contrary, it must affirmatively show that the court did not have jurisdiction, or the decree will be valid until reversed on appeal or vacated in some direct proceeding taken for that purpose."

The Supreme Court of the United States reversed the judgment of the circuit court and thus state the rule of law applicable:

> "It is undoubtedly true that a superior court of general jurisdiction, proceeding within the general scope of its powers, is presumed to act rightly, and that presumption embraces not only jurisdiction of the cause or subject-matter of the action in which the judgment is given, but of the parties also.
>
> "The former will appear generally from the character of the judgment, and will be determined by the law creating the court or prescribing its general powers. The latter should regularly appear by evidence in the record of service of process upon the defendant or his appearance in the action. But when the former exists the latter will be presumed. * * *
>
> "The rule is different with respect to courts of special and limited authority. As to them there is no presumption of law in favor of their jurisdiction. That must affirmatively appear by sufficient evidence or proper averment in the record, or their judgments may be deemed void on their face.
>
> "But the presumption which the law implies in support of the judgments of superior courts of general jurisdiction

only arises with respect to judicial facts concerning which the record is silent. Presumptions are only indulged to supply the absence of evidence or averments respecting the facts presumed. They have no place for consideration when the evidence is disclosed or the averment is made. When, therefore, the record states the evidence or makes the averment with reference to a judicial fact, it will be understood to speak the truth on that point, and it will not be presumed that there was other or different evidence respecting the fact, or that the fact was otherwise than as averred."

In this connection, without copying the opinions, I desire to refer the Court to Williamson *vs.* Perry, 8 How., 540; Christmas *vs.* Runnell, 3 Wall., 305. In the latter it is held that judgments used in evidence in suits in different States from that which they are rendered "are open to inquiry as to the jurisdiction of the court and notice to the defendants, but in all other respects they have the same faith and credit as domestic judgments."

Neither silence nor consent, even if the consent or agreement be in writing, will confer jurisdiction, because the parties cannot confer on the court a jurisdiction denied to it by the statute.

Grave *vs.* Carbon, 132 U. S., 571; 10 Sup. C'rt Rep., 196.

State of Indiana *vs.* Tollerton Club of Chicago *et al.*, 53 Fed. Rep., 18.

If the averments in the bill in the record now under consideration are true, then the district court for the northern district of Mississippi had no jurisdiction and the decree rendered by it is void.

The appellees by their demurrer admit that the averments of the bill are true and yield the case.

The appellants are not estopped by anything disclosed in the record. In order that there should be an estoppel the judgment or decree must be a valid one—that is, rendered by a court having jurisdiction.

If for want of jurisdiction or any other reason it was void it will have no effect.

Bigelow on Estoppel, page 29, 3d edition.

A judgment or decree without jurisdiction is void, and a void decree is no estoppel.

Martin *vs.* Williams, 42 Miss. Reports, 210.

There is, therefore, no estoppel because of the decrees of the Federal court. There is no equitable estoppel because of a matter *in pais*, for nothing appears on the face of the bill in the way of facts to give rise to it, and this matter must be pleaded.

A bill ought not to be dismissed for the want of proper parties. That could be easily remedied by an amendment.

See Milligan *vs.* Milledge, 3 Cranch, 220.

If any part of the bill is good, demurrer to the whole bill will not be sustained.

9 Peters, 632.

The learned judge, in his opinion in the court below, page 22 of the Record, says:

> "The bill fails to set out the substance of the proceedings in the district court, as required by the rules of this court, and for that reason the demurrer might be sustained, but the bill asks that they be referred to as often as may be required, and for the disposition of this and other questions presented I will consider these proceedings as though they were set out in the bill."

In drawing the original herein the mistake was made of following the rule and practice in the State of Mississippi instead of the rule in the Federal court, and the learned judge says "that for that reason and because the proceedings in the original suit were not set out in the bill the demurrer might be sustained." I submit, therefore, if he was correct in that view, that he ought to have sustained the demurrer on that ground and then permitted an amendment setting out this proceeding instead of basing his opinion on proceedings which he said were not part of the record and which could not be presented here for this Court to review and pass upon. I insist that the court below erred in dismissing the bill and refusing to allow an amendment presenting the full record, and that assignment of error is well taken and ought to be sustained.

The bill alleges that the quitclaim deeds were secured through gross fraud, and that no consideration whatever was given for them. The demurrer also admits the truth of this averment. Therefore the deeds are inoperative and void and ought to be so declared by the Court.

Opposing counsel in the court below laid much stress on restoring the *status quo* of all the parties (see ground 14 of demurrer, page 15 of the Record) and contended that all the purchasers of any of the land were necessary parties, etc. By reference to the prayer of the bill (pages 13 and 14 of the Record) it will be seen that no such view is sustained, and that it is not sought to do injustice to any one. The judge in his opinion says the parties had agreed in writing upon a basis of adjustment of their respective interests. We admit that they are bound by the agreement, but the agreement is one thing and the decree quite a different thing.

The parties could agree upon a basis of an adjustment, but they could not give the court jurisdiction to enter a decree for its enforcement. The court did not and could not assert or claim jurisdiction because of the agreement. For this reason we offer to affirm sales of land made by appellees to *bona fide* purchasers for value, the mortgagees in possession only claiming that the proceeds of sale be properly applied. I think there is no answer to this proposition. The case resolves itself into one in which the mortgagee has exceeded his powers in the enforcement of his lien or has not propounded it lawfully. He has asked a court not having jurisdiction to make a decree, and therefore cannot rely upon the sale under it as divesting title.

2d Jones on Mortgages, secs. 1678 *et seq.*

We do not seek to do injustice to any of the defendants in the court below. Did the Federal court on the face of the record have jurisdiction? If not, its decree is void, and ought to be so declared, and the interest of all the parties can be secured under the agreement.

James L. McCaskill,
Attorney for Appellants.

156 5

Office Supreme Court U. S.
FILED
NOV 5 1894
JAMES H. McKENNEY,
Clerk.

156-527

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1894, No. 180.

B. H. EVERS, WILLIAM MARSHALL AND
GEORGE F. PHILLIPS, Appellants.

vs.

THOMAS WATSON AND THE DELTA AND
PINE LAND COMPANY, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE
UNITED STATES FOR THE NORTHERN
DISTRICT OF MISSISSIPPI.

BRIEF FOR THOMAS WATSON AND THE DELTA AND PINE LAND COMPANY.

FRANK JOHNSTON,
Solicitor.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894, No. 180.

B. H. EVERS, WILLIAM MARSHALL AND
GEORGE F. PHILLIPS, APPELLANTS.

VS.

THOMAS WATSON AND THE DELTA AND
PINE LAND COMPANY, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE
UNITED STATES FOR THE NORTHERN
DISTRICT OF MISSISSIPPI.

BRIEF FOR THOMAS WATSON AND THE DELTA AND PINE LAND COMPANY.

This is an appeal from a decree rendered by the United States Circuit Court for the Northern District of Mississippi, on December 5th, 1890, sustaining the demurrer of the defendants to the original and amended bills of these appellants, and dismissing the cause.

The amended bill contains a statement of the appellants' case.

The object of the bill is to set aside a sale of the lands now in controversy, made in 1886, under a final decree of the Circuit Court of the United States for the Northern District of Mississippi, in the equity cause of Thomas Watson against Evers, Marshall, Phillips, and one M. S. Baldwin, at which sale Thomas Watson was the purchaser.

The grounds upon which the sale is sought to be set aside, by the bill in this case, are:

First: That the Circuit Court of the United States for the Northern District of Mississippi had no jurisdiction of the cause in which the decree was made.

Second: Upon the general allegation that there was some combination made by Thomas Watson, by which one N. T. Burroughs purchased some of the lands and Watson purchased other portions of the lands sold by the commissioner of the Court under the decree. The averments touching this matter are exceedingly vague and indefinite, and were so treated by the learned Judge in his opinion, which forms a part of the record in this case.

Third: It is averred that the agents of Thomas Watson prevented a sale of the lands in London by these complainants prior to the sale under the consent decree, and the decree was executed within six months after its date, the complainants being allowed by the decree six months within which to pay it off.

Finally, the bill seeks to set aside and cancel certain quit-claim deeds made by these appellants to the Delta and Pine Land Company shortly after Thomas Watson's purchase, and soon after Watson's sale to the Delta and Pine Land Company. The averment being a want of consideration for said quit-claim deeds, and because, as alleged, said deeds were delivered to an agent of the Delta and Pine Land Company upon the condition that the same were to be be returned to the grantors, in the event that a new company, then proposed to be formed in London by these appellants, did not purchase the lands from the Delta and Pine-Land Company.

It appears from the bill that the decree made in the former suit was a compromise and consent decree, based on certain agreements referred to by the bill as constituting part of the record in said former cause, but they are not exhibited with nor explained by the bill, nor are all the terms and conditions of the consent decree explained by the bill.

The proceedings in the former suit are not set forth, nor are any parts of the record in the former suit exhibited with the present bill.

It appears that the former suit was commenced by Thomas Watson in the State Court in DeSoto county, and was removed by Evers to the United States Circuit Court, after an arrangement and adjustment had been made between all the parties to the cause by which there was a single controversy between Evers, a subject of Great Britain, on the one side, and all the other parties who then had a common interest, on the other side, there being no other issue or controversy. This appears from the opinion of the Judge who decided the case, who looked to all the proceedings in the former cause according to a request made in the present bill.

There is no offer made in the bill by these complainants to perform the consent decree or the agreements alluded to which were made in the former cause. Nor are any of the other purchasers of the lands brought in as parties to the present suit, nor is there any proposition or basis suggested for re-establishing the *status quo*.

It appears inferentially from the bill, and expressly in the opinion of Judge Hill, that Thomas Watson had sold the land to the Delta and Pine Land Company, who purchased the land without any notice of alleged irregularity in the bidding at the sale.

The present bill is vague and indefinite in all material matters, and is unintelligible except by reference to the proceedings in the former cause, which are not exhibited with this bill, and are not in the present record.

A more precise statement of the fact will be made under each of the several propositions upon which appellees rely, and in the order in which said propositions will now be stated.

I.

The question of the jurisdiction of the United States Circuit Court for the Northern District of Mississippi of the former cause, cannot be considered on the vague and imperfect statement of the former proceeding made in this bill.

The nature and character of the former proceedings, the attitude, interests and rights of the different parties, the terms, nature and conditions of the agreements and adjustments of the parties made in the former proceedings, vaguely alluded to by the present bill, as well as the scope, character and conditions of the former consent decree, are left wholly unexplained by the bill.

It is impossible to intelligently consider or decide *upon the averments of this bill*, the question whether the United States Circuit Court did or did not have jurisdiction of the former suit upon its removal from the State Courts.

If therefore the averments of the bill are alone to be looked to in respect to the question of the jurisdiction of the court in the former cause, I respectfully submit to this Honorable Court, that the question cannot be determined by this court and cannot be considered, for the reason that the facts upon which that question necessarily depends are not stated by the bill.

The presumption of law is that the court did have jurisdiction of the former cause, and that its decree is valid. a presumption that applies to all courts of general jurisdiction. and to the Federal courts that uniformly are held to be Courts of superior jurisdiction.

Wood vs. Mann, 1 *Sum.*, 578.

Skillerus vs. May, 6 *Cranch*, (*U. S.*), 267.

Exparte Watkins, 3 *Peters*, 193.

McCormick vs. Sullivant, 10 *Wheat.*, 192, 199.

Kennedy vs. Bank, 8 *Howard*, 586.

The judgments, decisions and decrees of courts of general jurisdiction and of the Federal Courts, which are courts of superior and not of inferior jurisdiction, so far as collateral attacks are concerned, and except upon direct appeal, are conclusive, and the record need not set out the jurisdictional facts.

U. S. vs. Arrendo, 6 *Peters*, 729.

This doctrine has been fully sanctioned also by the decisions of the State Courts.

Wright vs. March, 2 *Greene*, (*Iowa*), 94.
Baldwin vs. Hale, 17 *John.* (*N. Y.*), 272.
Griswold vs. Sedgwick, 1 *Wend.* (*N. Y.*), 126, 131.
Bank vs. Judson, 3 *Selden*, (*N. Y.*), 254.
Moss vs. Presby, 5 *Fost.*, 299, 301.

This legal presumption stands therefore in favor of the validity of the decree in the former cause, and in favor of the jurisdiction of the court.

There is nothing in the bill in this case to affect or disturb this presumption, even if it was conceded that the jurisdiction of the court and the validity of the decree could be assailed collaterally, a proposition which is not conceded but denied.

But assuming, for the sake of the argument, that the question of the jurisdiction of the court in the former cause can be considered in the present collateral proceeding, I respectfully submit that the facts relating to the former suit are not stated with sufficient fullness or clearness to enable this Court to decide the question of jurisdiction.

The case was begun in a State court, and was removed to the United States Circuit Court. It is not stated in this bill when or by whom it was removed.

The nature and character of the controversy between the parties is not explained by this bill. It is not shown, except by remote reference, that there was a controversy between Thomas Watson and M. S. Baldwin. The character and nature of such controversy is not explained in any manner. Whether there was any controversy between Watson and Baldwin at the time of the removal of the cause to the Federal Court, is not stated. The attitude of the various parties in respect to the alleged controversy at the time of the removal, is nowhere explained by the bill.

In the stating part of the bill, it is not averred that Evers, Phillips, or Marshall, are subjects of Great Britain, or were such at the time of the commencement or removal of said former cause.

In the caption of the bill, the present residence and citizenship of the complainants is recited, but it is not stated or recited that they were subjects of Great Britain at the time of the removal of the former suit. Nor is it anywhere stated by whose request the removal was made.

In a word, no intelligent conclusion can be reached, on the statements of this bill, as to whether the Court did or did not have jurisdiction of the former cause, treating it as an original and independent question.

It is not shown by this bill upon what state of facts the Court in the former cause decided that it had the jurisdiction under the removal acts of Congress. It is not necessary that these jurisdictional facts should appear on the record of the former cause, the presumption of law being that on the facts before it, the Court decided correctly the question of its jurisdiction.

Grignons Lessee vs. Astor, 2 How., (U. S. C. C.) 319.

U. S. vs. Arredendo, 6 Peters, 729.

Slocum vs. Providence Steam Co., 10 *R. I.*, 112 116.

In concluding this proposition, I respectfully submit to the Court, that the presumption of the validity of the former decree, and that the United States Court decided the question of its jurisdiction correctly in the former cause, are legal presumptions that cannot possibly be affected or disturbed by the vague and uncertain statements contained in the present bill.

II.

Upon the statement of facts contained in the opinion of the learned Judge who decided the present case in the Circuit Court, it appears clearly that the Circuit Court for the Northern District of Mississippi had jurisdiction of the former equity cause.

The bill in the present case fails to set out the proceedings in the former cause, but asks, "*leave to refer to said bill and decree and all the papers on file in said cause as often as may be necessary.*"

It was objected by the demurrer to the bill, that the former proceedings should have been properly set forth and pleaded by the complainants, upon which the learned Judge of the Circuit Court said, in his opinion: "*The bill fails to set out the substance of the proceedings in the district court as required by the rules of the court, and for that reason the demurrer might be sustained, but the bill asks that they be referred to as often as may be required, and for the disposition of this and other questions presented, I will consider those proceedings as if they were set out in the bill.*"

It appears, from the opinion of the Judge, that the jurisdictional question was expressly raised and directly decided by the Court in the former cause on a motion made to remand the case to the State Court, which was denied by the Federal Court.

Judge Hill thus explains the ground of the decision maintaining the jurisdiction in the former case :

"*The reason stated in the bill denying the jurisdiction is that Watson and Baldwin were both citizens of the State of Illinois.*

"*The suit was brought in the Chancery Court of DeSoto county, which had complete jurisdiction of both the subject matter of the suit and of all the parties. Before the cause was removed to the District Court all the parties, by written agreement, arranged the controversy between themselves by placing Evers on one side and all the others on the other side, thus placing Watson and Baldwin's interests together; so that had the bill then been filed in the District Court there would have been no question as to the jurisdiction of the Court.*

"*As I understand the law in such case, this is the test of the right of removal. No matter how the parties stand on the record as plaintiff or defendant, a court of equity looks to the interest of the parties in the controversy involved in the suit at the time the removal is made, and if the suit could have been brought in the Federal Court at that time the right of removal will be maintained, and being once in the Federal Court, its jurisdiction will be continued to the end of the litigation.*"

It appears, therefore, from the opinion of the Judge of the District Court, that the record in the former case shows affirmatively the jurisdiction of the Court. And that there was but one controversy, in which Evers was on the one side and Watson and Baldwin on the other side. And it thus appears that when the Court, in the former case, came to examine the record, and the facts respecting the attitude of the parties, it found that Watson and Baldwin were ranged on the same side, and jointly interested with Watson in waging a controversy with Evers.

The actual interests of the parties indicate and fix their real attitude in the case, as plaintiffs or defendants, and determine the question of jurisdiction.

Harter vs. Kernochan, 103 *U. S.*, 562.
Woodrund vs. Clay, 33 *Fed. Rep.*, 897.
Anderson vs. Bowers, 40 *Fed. Rep.*, 708.
Edgarton vs. Gilpin, 3 *Woods* (*U. S.*) 277.
Swann vs. Myers, 79 *N. Car.*, 101.

The objection that Baldwin and Watson are citizens of Illinois ~~and that~~ the cause could not be removed to the Federal Court by Evers, who is an alien, is wholly untenable, in view of the fact that Baldwin and Watson had no controversy between themselves, and were united in interest on the same side of the controversy between Watson and Evers.

In other words, Baldwin was entirely eliminated from the case so far as this jurisdictional question is concerned, and the sole controversy was between Watson on the one side and Evers on the other, and the Federal Court clearly had the jurisdiction of the cause on its removal from the State Court.

The only objection urged by the complainants in the present case against the jurisdiction of the Court in the former cause, rests upon the ground that Watson and Baldwin were citizens of the State of Illinois, and that Baldwin was a defendant, and the objection assumes, contrary to real facts, that there was a controversy between Watson and Baldwin.

The present case is clearly distinguishable from the decision in *King vs. Cornell*, 106 *U. S.*, 398, because of the important and controlling fact that there was no controversy between Watson and Baldwin, the latter's interest being that Watson should prevail in his controversy with Evers. Under the Federal removal statutes, in this attitude of the parties, Evers had the right to remove the cause, and such was the decision of the United States Circuit Court in the present as well as in the former cause, where the jurisdictionai point was directly presented for adjudication, and was decided upon a full and careful view of all the facts relating to the attitude and interests of all the parties. Those facts are fully and amply disclosed by the record in the former cause, though not so fully stated in detail in the opinion of Judge Hill in the present case.

I presume it is wholly unnecessary to explain the precise nature of the proceedings by Thomas Watson against Evers in respect to the lands alluded to in the present suit, as the only point or objection raised by the present bill to the jurisdiction is, that there was a controversy in the former cause between Watson and Baldwin, citizens of the same State, which is disposed of by the opinion of the Circuit Court on the ground that there was no controversy whatever between Watson and Baldwin, and that Baldwin was ranged with Watson against Evers.

III.

The question of the jurisdiction of the United States Circuit Court for the Northern District of Mississippi, in the equity cause of Thomas Watson vs. Evers and others, and of the validity of the final decree rendered in said cause, cannot be raised or considered in the present proceeding which attacks collaterally the former decree and judgment of the U. S. Circuit Court.

In deciding the present case Judge Hill held that the decision of the Court in the former case on the question of its own jurisdiction, presented by the motion to remand, could not be attacked in collateral proceedings, and that if that decision was erroneous, "*the remedy was by appeal to the Supreme Court and not by the proceedings in this cause.*

I respectfully submit that this ruling of the learned Judge is correct, and is fully sustained by both principle and authority.

The principle is well settled, that a court always has the power to determine its own jurisdiction, and this is a judicial power which belongs to the Federal Courts, which are universally recognized as courts of superior and not of inferior jurisdiction, and so far certainly, as all collateral attacks are concerned, their jurisdiction need not appear upon the record.

Wood vs. Mann, 1 *Sum.* (*U. S. Cir. C.*,) 578.

Skillerus vs. May, 6 *Cranch.* (*U. S.*), 267.

Exparte Watkins, *3 Peters*, 193.

McCormick vs. Sullivant, 10 *Wheat.*, 192–199.

Kennedy vs. Bank, 8 *Howard*, *U S.*), 586.

The definition and test of a superior court is one whose record need not set out the jurisdictional facts. Its judgment is conclusive except upon appeal.

United States vs. Arrendo, 6 *Peters*, 729.

This doctrine has been generally sustained by the State Courts.

Wright vs. March, 2 *Greene*, (*Iowa*,) 94.

Baldwin vs. Hale, 17 *Johns*, (*N. Y.*,) 272.

Griswold vs. Sedgwick, 1 *Wend.*, (*N. Y.*,) 126–131.

Bank vs. Judson, 3 *Selden*, (*N. Y.*,) 254.

Moss vs. Presby, 5 *Fost.*, 299, 301.

"*It has been expressly decided that the Circuit, District and Territorial Courts of the United States are Courts of general jurisdiction.*"

12 *Am. and Eng. Cyclopedia of Law*, *p.* 267, *par.* (*a*), *and note* 3.

The judgments of such courts carry the legal presumption of their correctness and validity. If the judgment and decrees of the Federal courts could be assailed collaterally and thus reviewed and set aside by other courts whenever incidentally and collaterally brought into view, they would possess no value whatever, and if such a doctrine were permitted, their judgments would be placed under the supervision and control of the State Courts, wherever there was a difference of opinion between the State and Federal Courts in respect to the jurisdiction of the latter.

The Courts of the United States must have the judicial power of deciding in all cases the question of their own jurisdiction, and, as a general proposition, this power must be exclusive and its exercise conclusive upon the parties except in direct appellate proceedings.

The question of Federal jurisdiction under Federal statutes, especially in removal cases, is often a nice and difficult one, concerning which courts and jurists may well differ in opinion.

It is necessarily a Federal question, to be decided ultimately and conclusively by the Federal Judiciary. The decision of a Circuit or District, or Circuit Court of Appeals, directly made upon a question of its own jurisdiction, must stand as conclusive until reversed upon appeal. If one Federal Court, in a collateral proceeding, can review the decision of another Federal Court, then such power would also belong to the State Courts and to all courts, a doctrine which would destroy the value of the Federal Courts. And it also follows that the Circuit Court for the Northern District of Mississippi could not set aside the former decree in a collateral proceeding, on the ground that the Court had decided the jurisdictional question erroneously. The remedy, as the learned Judge said in his opinion, was by appeal from that decision.

It was said by the Supreme Court of New York, on the precise point as to the conclusiveness of a decision by a superior court on the question of its jurisdiction:

"*A Court always has jurisdiction of the person of the plaintiff who instituted a suit in its forum and if the defendant is properly brought in, although he de-*

nies the jurisdiction over the subject yet is also in Court.

"*Thus the jurisdiction exists over the parties and the necessary power to determine the very question of jurisdiction itself enables the tribunal to render a determination of that question which will be valid and binding.*

"*A question of jurisdiction is not an incident of the questions upon the merits of the cause, it is in itself a principal question, and it may be the principal question in the case.*"

King vs. Poole, 36 *Barb.* (*N. Y.*), 242.

It was expressly decided by the South Carolina Supreme Court, that the adjudication and decision of a superior court, having the parties before it, of the question of its own jurisdiction is conclusive upon the parties, except on direct appellate proceedings.

Scott vs. Scott, 1 *Bailey* (*S. C.*), 294.

This honorable Court, in Grignon's Lessee vs. Astor, thus stated the rule:

"*The decree is an adjudication upon all the facts necessary to give jurisdiction, and whether they existed or not is wholly immaterial, as no appeal is taken, the rule is the same whether the law gives an appeal or not; if none is given from the final decree it is conclusive on all whom it concerns. If there is error in it of the most palpable kind, if the court which rendered it have in the exercise of jurisdiction disregarded, misconstrued or disobeyed the plain provisions of the law which gave them power to hear and determine the case before them, the title of a purchaser is as much protected as if the adjudication would stand the test of a* *writ of error; so when an appeal is given but not taken in the time prescribed by law.*"

Grignon's Lessee vs. Astor, 2 *Howard*, 319.

But again, I respectfully submit to the Court, that it must be conclusively presumed that the United States Circuit Court in the former case, on the motion to remand to the State Court, examined into the facts upon which the jurisdictional question depended, and that those facts sustained the jurisdiction of the Court.

It is not required that these facts should be set out in the record of the cause to sustain the jurisdiction. In addition to the cases already cited, I call attention also to the following decisions :

Kelsey vs. Wiley, 10 *Ga.*, 371.
Bush vs. Lindsey, 24 *Ga.*, 245.
Baker vs. Chaflin, 12 *Iowa*, 204.
Huntington vs. Charlotte, 15 *Vt.*, 46.
Pope vs. Harrison, 16 *Lea* (*Tenn*).
Slocum vs. Steam Co., 10 *R. I.*, 112-116.

Where a court has jurisdiction in respect to a subject, it is for that court to decide whether a particular case comes within the jurisdiction, and the presumption is that it decided the question in accordance with the facts. The Supreme Court of Virginia thus correctly and accurately states this principle :

"*The only question would seem to be whether the subject matter was within the jurisdiction of the Court; if it was, if the jurisdiction of the Court extended over that class of cases, it was the province of the Court to determine for itself whether the particular case was one within its jurisdiction.*" * * * * "*Where its* *jurisdiction is questioned, it must decide the question itself, nor is it bound to set forth in the record the facts upon which its jurisdiction depends.*"

Cox vs. Thomas, 9 *Grattan*, 323.

The decision just cited is directly in point in respect to the precise principle now being considered. This must, in the nature of things, be the basis upon which our judicial systems, State and Federal, rest, and any other rule would produce interminable confusion and intolerable inconvenience.

The jurisdiction of the United States Circuit Court extended over and embraced the entire class of cases removable under the Federal statutes. Speaking generally, removal causes comprise those in which aliens and citizens of other States are parties. This constituted the subject matter of jurisdiction, and such causes constituted generally the class of cases falling within the jurisdiction of the Court.

Whether or not that particular case came within this general class of cases, was the precise question that the Court was called upon to decide, and that decision constituted the judicial determination of the jurisdictional question, depending upon the facts of the particular case.

Upon the ascertainment of the facts relating to the attitude of the parties and the nature of the controversy, the judicial decision by the Court that the particular case came within the general class of cases of which it had jurisdiction, must, in the nature of things, be as conclusive on the parties as the decision of any other question that might have arisen in the suit.

No appeal was taken from the decision of the Court on the jurisdictional question; on the contrary all the parties to the suit acquiesced in the correctness of the decision, and entered into a consent decree, which was made the final decree in the cause.

The Federal Court claimed and maintained jurisdiction, the State Court yielded the jurisdiction to the Federal Court, and thereupon, all the parties, on the basis of the jurisdiction of the latter Court, entered into a consent decree, which settled the entire controversy.

It would be an extraordinary result that this decision of the Court and the final decree in the former cause, could be set aside and ignored, in a collateral proceeding, and treated as null and void.

It is respectfully submitted in concluding this proposition:

1. *That the decision of the Federal Court on the question of its own jurisdiction, is binding not only on the State Courts, but upon all other Courts, until reversed on appeal.*

2. *That it was exclusively within the province of the Court, on the motion to remove the cause, to ascertain the facts respecting the attitude of the parties and the precise character of the controversy; and the Court is presumed to have had before it a state of the facts which sustained its jurisdiction.*

3. *Having jurisdiction, generally, under the Federal statutes of removal cases, it was for the Court to decide whether the particular case came within that class of cases.*

4. *If such decision does not carry with it the full value and dignity of the judicial determination of a purely judicial question, and if it is open to collateral attacks at all times and*

from all quarters, then all other courts may in effect review the abstract correctness of the decisions of the Federal Courts and annul their judgments on jurisdictional questions whenever they are regarded by such other courts as erroneous. This would degrade the Federal Courts to the position of courts of inferior jurisdiction, and deprive their decisions and judgments of all dignity and value.

5. *It would break down all distinctions between void judgments and decisions that are merely erroneous.*

In dealing with this question I have not brought into view nor considered the case where a court has flagrantly usurped a jurisdiction that plainly and clearly did not belong to it, and which by no possibility of judicial construction, could be embraced in any subject over which it has jurisdiction, if indeed such cases have ever arisen.

But I have dealt with the actual case presented, where a Superior Court, presided over by a Judge learned in the law, on proper pleadings, presenting the question of his jurisdiction, and on a full presentation of the facts, has judicially decided that the particular cause belonged to a class of cases over which Court had jurisdiction. The decision is correct on the facts presented. But if it were based upon an erroneous construction of the Federal statutes it stands as conclusive, until reversed on appeal by an Appellate Court.

IV.

The title of the purchaser of the lands under the former decree is protected whether the decision of the

Court in respect to its jurisdiction is correct or erroneous.

It appears from the statements of the bill in the present case, that Thomas Watson purchased the lands now in controversy at the sale made under decree, and that one N. T. Burroughs purchased about 162,000 acres of the lands sold under the decree.

It appears also by clear implication from the bill, and is stated in the opinion of Judge Hill, as shown by the record in the former cause, that the Delta and Pine Land Company had purchased from Thomas Watson, for a valuable consideration, without notice of any alleged irregularities in the sale.

Under the decision made by this Honorable Court in *Lessee vs. Astor*, this title is protected by the adjudication of the question of jurisdiction, even though it may be erroneous. In the language used by the Court in its opinion:

> "*If there is error in it of the most palpable kind, if the Court which rendered it have in the exercise of jurisdiction disregarded, misconstrued or disobeyed the plain provisions of the law which gave them power to hear and determine the case before them, the title of a purcher is as much protected as if the adjudication would stand the test of a writ of error: so where an appeal is taken and not taken in the time prescribed by law.*"
>
> *Grignon's Lessee vs. Astor, 2 How.*

The question has been presented by me in its general and abstract aspects, perhaps in greater detail than is required by the case, for in this connection, I beg leave to call the attention of the Honorable Court to the fact that although Judge Hill considered and decided the question of the jurisdiction of the Court in the former cause, he added that: "*It is admitted by the bill that it was a compromise decree by consent of all the parties to the suit based upon agreement in writing. Indeed, the validity of the decree is not directly attacked, and this question need not be further considered.*" (*Rec., p.* 23.)

The bill in this respect is not consistent. It avers that the Court had no jurisdiction. But the prayer for relief makes the decree the basis of the rights of the parties, thus conceding the validity of the decree.

V.

The complainants in this case are estopped from assailing the validity of the decree in the former cause, on the following grounds:

The decree was a consent decree which fixed the rights of the parties according to written agreements entered into and filed as parts of the record in the former suit. This decree stood in the nature of a contract between the parties. It has been fully executed according to its terms and stipulations, without dissent or objection from any of the parties to it.

Mr. Watson became the purchaser of the larger portion of the land. But Burroughs also purchased a large quantity of the land. The Delta and Pine Land Company purchased from Mr. Watson. This was in 1886.

It is not pretended that this decree was not fair and just in all its terms and stipulations, for in one aspect of the present bill the complainants ask that the sale be set aside and the decree be re-executed and carried into effect.

It is not pretended that these appellants have paid any taxes on the lands since the sale. It is fair to assume that The Delta and Pine Land Company has been discharging the taxes since the sale, and exercising all acts of ownership over the lands, and selling portions of the land from time to time.

It seems from the bill that the appellants themselves treated the decree as valid and the title as perfectly good in their effort to form a new company for the purchase of the lands.

They are, by their conduct, estopped from assailing the validity of the decree, or from controverting the title of The Delta and Pine Land Company. This proposition rests upon the familiar doctrine of equitable estoppel.

"*In equity where a man has been silent when in conscience he ought to have spoken, he shall be debarred when conscience requires him to be silent.*"

Bigelow on Estoppel, 2nd Ed., 452, 453. *Note 1.*

The doctrine is thus stated by the Supreme Court of Pennsylvania:

"*Equitable estopel has its root in the principle which casts a loss from a voluntary though innocent act upon the author of it, add hence, if one knowingly though he does it passively, by looking on, suffers another to purchase and spend money on land under an erroneous belief in his title without making known his claim, he* *shall not afterwards be permitted to exercise his legal rights against such person.*"

Miranville vs. Silverthorn, 48 *Penn., St.*. 149.

"*Where one lies by for a series of years with no title on record, where it is a secret trust, and at the same time knows that others are spending money and making valuable improvements on the faith of titles, all regular on their face, without notice, or anything to put them on inquiry in regard to adverse claims, there the law declares such silence fraud and will postpone the title of such owner under such circumstances.*"

Woods vs. Wilson, 37 *Penn. St.*, 384.

The Supreme Court of New York thus stated the principle :

"*A person who being himself the owner of property stands by and sees another sell it as his own, without objection, will not be allowed afterwards to assert his title. His silence when in good conscience he ought to speak shall close his mouth when he would speak.*"

Bank vs. White, 6 *Barb.*, 589.

The Supreme Court of New York, again speaking of person standing by without objection and seeing others dealing with property, said :

"*Having so stood by and suffered their expenditures to be made, principles of equity would not permit him afterwards to assert his title against the plaintiff.*"

Hall vs. Fisher, 9 *Barb.*, 31.

I quote the following language from the opinion of the Supreme Court of Pennsylvania, in *Hill vs. Epley :*

"*The general principle is that where the conduct of a party has been such as to induce action by another, he* *shall be precluded from afterwards asserting to the prejudice of that other, the contrary of which his conduct has induced the belief.*"

Hill vs. Epley, 7 *Casey, Penn.*, 334.

The basis of the action of the appellees is the contract and agreements of these complainants, their consent to the sale, and their long acquiescence; all that has been done was in exact conformity with their own contracts and agreements, and a court of equity will not permit them now to repudiate their action, and thus destroy the rights of the appellees which have been acquired by reliance on their actions and acquiescence.

VI.

Another distinct ground for the dismissal of the bill in this case is that the parties cannot be placed in statu quo.

Neither Baldwin nor Burroughs are made parties to this cause. And although Mr. Watson is given a lien on all the lands embraced in the decree, for the **$145,000** awarded him by the consent decree, it is not proposed to bring the 162,000 acres of land purchased by Burroughs again before the Court. Other persons purchased portions of the land at the sale. These portions are not proposed to be dealt with. Mr. Watson, according to the purpose of this bill, is to be deprived of his purchase, and placed back as he stood at the time of the consent decree, deprived of large portions of the land which formed part of the security for his recovery. This would be highly unjust and inequitable.

Under a proceeding to set aside the sale and titles of these appellees, and then for the specific enforcement of the consent decree, the equitable principle is of universal acceptance that the *status quo* must be restored as a condition to the granting of any relief.

Johnson vs. Jones, 13 *S. & M.* (*Miss.*), 580-583.
Jones vs. Smith, 4 *George* (*Miss.*), 215.

VII.

I respectfully insist, also, that Burroughs and Baldwin, especially the former, are necessary parties to this cause.

This is made a ground of demurrer to the bill.

It appears from the face of the bill that Burroughs is a necessary and material party to this cause.

Equity requires that, if Mr. Watson's title is to be destroyed, his original security provided by the agreements of the parties shall be restored to him. This cannot be done without the presence of Burroughs as a party in this cause. If Baldwin has an interest, he also is a necessary party to a proceeding to set aside the sale and carry into effect the former decree. And he is a necessary party to a bill to set aside the decree which adjudicated and fixed his rights in the subject matter of the former suit. Upon this ground alone the bill was properly dismissed.

VIII.

There is no offer in the bill to perform the consent decree, nor to perform or carry out the contract and agreements upon which the decree is based.

And there is no equity in the bill in this respect. It is conceded that the appellants owed Mr. Watson $145,000 under the consent decree, and a large sum for taxes was also charged on the land, and the bill rests entirely upon the speculative idea that upon an accounting this debt will be paid. If overpaid the complainants ask for a decree in their favor, but if not paid there is no offer to perform the decree. The bill is in in this respect, speculative and experimental.

IX.

The title of the Delta and Pine Land Company, a purchaser without notice of any alleged irregularity in the sale, cannot be defeated by this proceeding.

Even had the decree been reversed and the sale set aside, on a direct appeal, this title could not be affected by such reversal, unless the Delta and Pine Land Company purchased pending the appeal.

All the purchasers of the lands from Mr. Watson, and as stated in the bill as well as in opinion of Judge Hill, there were many, must have purchased upon the faith of the decision of the Court that it had jurisdiction of the former cause, and as well upon the faith of the consent decree entered into by these apappellants.

It is not pretended in the bill that the Delta and Pine Land Company had any notice whatever of any alleged irregularities in the sale, and upon the most familiar principles of equity cannot be affected in its title thereby.

This is one of the grounds thus stated in the opinion of Judge Hill :

"Parties cannot sit still and depend on chance to ascertain whether frauds have been committed upon their rights," and especially, as in this case, when it is alleged that suspicious circumstances attended the sale, which must have been known to them at the time the sale was made, and to remain silent until years have elapsed and the lands have been purchased by other parties, presumed to be for a valuable consideration, and without notice, so far as the bill alleges, and when it is impossible to place the parties in statu quo."

X.

The vague averment of fraudulent conduct on the part of Mr. Watson at the sale, is thus treated and disposed of by the learned Judge in his opinion:

"The last and only other ground for setting aside the sale is the alleged conspiracy between Watson and others and Burroughs. The bill fails to state with precision the facts constituting the alleged fraud, the names of the persons who would have bid for the lands, how much they would have given, or whether they were prepared to pay the purchase money."

"There is no allegation that the complainants did not know of the sale, or that they were not present in person or by agent or attorney, or that they made any effort to ascertain whether there was any fraud or collusion between those parties, or any others to prevent a fair sale of the lands." (*Rec., p.* 24.)

Fraud cannot be charged generally as a proposition or conclusion of law. The precise facts constituting the fraud must be clearly and fully set forth in order that the court may determine whether they constitute such fraud as to entitle the party to relief.

The names of none of the alleged deterred bidders are given, and the particular acts of Mr. Watson are not explained. The alleged arrangement between Watson and Burroughs is not set forth even in the most general terms. If there was any understanding between them it by no means appears from anything in the bill that it was in any manner unfair or prejudicial to the rights of these appellants.

It is not stated in the bill what persons were prevented from being present at the sale, whether they were responsible persons, or what they would have bid for any of the land.

The amount of Watson's bid is not stated, nor is that of Burroughs given in the bill. Nor is it explained when and by what means the alleged irregularities were discovered by these appellants.

This Honorable Court, speaking of a general averment of concealment and fraud in a bill to avoid a statute of limitation said:

" *This averment is too general and indefinite to have the effect to avoid the operation of the statute. The particular acts of fraud or concealment should have been set forth by distinct averment, as well as the time when discovered, so that the Court may see whether, by the exercise of ordinary diligence, the discovery might not have been made before.*"

Beaubien vs. Beaubein, 23 *How.*, 208.

" *In suits instituted for the purpose of impeaching transactions on the ground of fraud it is essential that* *the nature of the case should be distinctly and accurately stated. A mere general charge of fraud without alleging specific facts, is not sufficient to sustain a bill. It must be shown in what the fraud consists, and how it has been effected.*"

Kerr on Fraud and Mist., (*Bump's Ed.*,) 365.

"*The facts constituting the fraud must be stated.*"

Bliss on Code Pleading, § 211.

"*Pleadings must state facts and not legal conclusions; and fraud is never sufficiently pleaded except by the statement of facts upon which the charge is based.*"

Ockenden vs. Barnes, 43 *Iowa*, 619.

"*The use of epithets, however bountifully multiplied, will not supply the place of facts.*"

Clodfelter vs. Hulett, 72 *Ind.*, 137.

It is not pretended that the appellants were not present at the sale, and if the property was being sacrificed they must have known it, and should have represented this to the Court on the coming in of the report of sale.

It is nowhere stated in the bill that the land, if again exposed for sale under the decree, would bring the amount due to Watson, or would bring an advance over the prices at which it was originally sold by the commissioner.

Burroughs' attitude in the case is not shown, and it is left wholly to conjecture as to the nature, scope or character of the alleged understanding between him and Watson. In the absence of all knowledge or explanation of the facts relating to the subject, it is impossible to say what its effect would be upon the rights of the several parties.

Finally, it is not averred or suggested that the Delta and Pine Land Company had any notice of the alleged irregularities in the biddings at the sale, and its rights clearly cannot thereby be affected.

The opinion of Judge Hill rests upon each of these grounds, the want of notice of the purchasers from Mr. Watson, and the general vagueness and insufficiency of the averments of the bill.

XI.

The bill avers that a company was being organized by the complainants in London for the purchase of these lands, with a view of paying off the amount due Mr. Watson with the proceeds, and that six months was allowed by the decree within which it could be discharged, and that within the six months the land was sold by the commissioner.

It avers also that Thomas Watson, by his agents, circulated reports in London, before the sale under the decree, which prevented the formation of the new company.

These grounds are thus considered and disposed of by Judge Hill :

"*By referring to that decree*" (the consent decree) *it is found that this extension* "(of six months)" *was granted upon condition that complainants and others associated with them in the agreement to pay off and satisfy within three months the taxes due upon said lands, and if not paid within that time the commissioner would* *proceed to make the sale, the taxes were not paid by complainants or their associates within the time stated, and have not since been paid by them, the sale had not been made until after the three months had elapsed, so that this objection to the decree and sale cannot be maintained.*"

It may also be added, as another and complete answer to this objection, that if the sale had been made prematurely that fact should have been brought up on the coming in of the report of sale as an objection to its confirmation by the Court.

This could not be held back and made the ground of a subsequent attack upon the title acquired under the decree.

On the other point, the learned Judge said in his opinion:

"*The bill does not allege what said reports were, to whom made, or that they were untrue, or any facts from which the Court could determine whether such statements tended to constitute fraud on the rights of claimants or not. Besides, if these reports were made before the sale, they should have been presented as grounds for its disaffirmance, and if made after the sale, it could not affect Watson's rights under the sale.*"

XII.

The last question presented is whether the bill should have been retained, and the quit claim deeds made by the complainants to The Delta and Pine Land Company declared void and set aside.

The averment in the bill is that the quit-claim deeds were delivered to an agent of The Delta and Pine

Land Company, by the complainants, upon condition that they were to be deposited with Walter Webb & Co. of London. solicitors of an English company then in process of formation, and if no sale was made they were to be returned, instead of which they were recorded in the register of deeds in Mississippi.

It is respectfully insisted that the bill should not be retainrd on this ground.

The decree of sale is valid, the sale conferred title upon Thomas Watson, and The Delta and Pine Land Company by its purchase, acquired the full and perfect title to the lands, acquiring all the title and interest of these complainants in the lands by its purchase. The correctness of these propositions, I respectfully submit, clearly appear in the case.

It follows, therefore, that no title or interest passed by the quit-claim deed from the complainants. Their entire interest in the lands had been already divested by the decree and sale, and conferred upon The Delta and Pine Land Company, and the quit-claim deeds did not affect their rights in any manner. No obligations are imposed upon the complainants by said deeds, nor are the rights or position of the complainants affected thereby.

Many persons, as appears both from the bill as well as the opinion of Judge Hill, had purchased from the Delta and Pine Land Company. It would have been a useless thing to have retained the bill for the purpose of declaring the nullity of the quit-claim deeds. It would have been an idle ceremony, leaving after such a decree the paramount title and ownership of the lands in The Delta and Pine Land Company, and leaving the complainants entirely divested of all title or ownership in the land.

The Delta and Pine Land Company, as a purchaser from Thomas Watson, without notice of any of the alleged irregularities in the sale under the decree, unquestionably acquired a good title by such purchase against these complainants. Said Company acquired all the title of these complainants by its said purchase, and the quit-claim deeds afterwards executed, did not have the effect in law or equity of passing any additional title or right to the said Company, nor did they add anything to the title already in the Company, nor did they impose any obligation upon the complainants, nor did they deprive the complainants of any title or right in the land.

If the quit-claim deeds were cancelled, the entire ownership and title paramount would still remain in the Delta and Pine Land Company, and no title or rights whatever to the land would be conferred upon the complainants, and no relief or recovery could possibly have followed such a decree.

The theory and basis of the present proceeding, according to the bill, is that the Delta and Pine Land Company acquired no title from Mr. Watson, for the reason that the decree under which he purchased was void.

If this proposition was correct, then the only claim of title in the Company would rest upon the quit-claim deeds. But when it appears that the title coming through Mr. Watson is a perfect title paramount, both at law and in equity, in the Delta and Pine Land Company, the existence of the quit-claim deeds is wholly immaterial, for if cancelled, the pre-existing title in the Company would still remain intact and unimpaired.

The learned Judge thus disposed of this point in the case:

"The complainants knew that the new company had not been formed, or the lands sold under it, to facilitate which the quit-claim deeds are alleged to have been executed."

"It would have been an easy matter for complainants to have ascertained whether the deeds had been deposited with the attorneys of the contemplated company, and if not to have called for their return, and if not returned to have taken immediate steps for their cancellation."

"It is too late after this lapse of time has intervened, and most if not all the lands have been sold to other parties, so far as this bill shows, must be presumed to have purchased for value, without notice of the claim set up by complainants, to now set this deed aside, as they impose no obligation or liability on complainants, and if complainants are not entitled to any interest in the lands, as above held, the setting them aside could work no benefit to complainants, on the one side, or the refusal to do so work any injury to them on the other."

I respectfully submit to the Honorable Court, that the opinion of the learned Judge who decided this cause in the lower court and sustained the demurrer to the bill, is correct in all respects, and that the decree appealed from should be sustained

FRANK JOHNSTON,
Solicitor for Appellees.